2010

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

MINUTES

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

2009-2010

Volume 1

REPRESENTATIVE WILLIAM C. McGEE
CO-CHAIR

REPRESENTATIVE JENNIFER WEISS
CO-CHAIR

ATTENDANCE

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

(Name of Committee)

DATES	1-13-10	2-2-10	2-16-10	3-4-10	3-31-10	4-14-10	10-20-10	12-6-10	1-19-11						
REP. JENNIFER WEISS, CO-CHAIR	X	X	X	X	X	X	X	X	X						
REP. WILLIAM McGEE, CO-CHAIR	X	X	X	X	X	X	X	X	X						
REP. GEORGE CLEVELAND	X	X	X	X	X	X		X	X						
REP. BEVERLY EARLE	X	X	X		X	X			X						
REP. CHRIS HEAGARTY	X	X	X	X	X	X	X	X	X						
REP. JULIA HOWARD	X	X	X	X	X	X	X	X	X						
REP. MICHAEL WRAY	X	X	X	X	X	X	X	X							
STAFF:															
KAREN COCHRANE BROWN	X	X	X	X	X	X	X	X	X						
JENNIFER McGINNIS	X	X	X	X	X	X	X	X	X						
BILL PATTERSON	X	X	X	X	X	X	X	X	X						
MARTHA WALSTON	X	X	X	X	X	X	X	X							
JOE MOORE	X	X	X	X	X	X		X	X						
SUSAN DOTY	X	X	X	X	X										
CINDY DOUGLAS						X	X	X	X						
JAYNE NELSON	X	X	X	X	X	X	X	X	X						
REP. FRANK ILER			X	X			X	X							
REP. JAMES LANGDON			X												

Office of Speaker Joe Hackney
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee on Homeowners Associations (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of the 7 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. Vacancies of the Committee are filled by the Speaker of the House of Representatives, and the Speaker may dissolve the Committee at any time.

Representative Weiss	Co-Chair
Representative McGee	Co-Chair
Representative Cleveland	
Representative Earle	
Representative Heagarty	
Representative Howard	
Representative Wray	

Section 3. The Committee may study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. The Committee may also study any other relevant issue that it deems appropriate.

Section 4. The Committee shall meet upon the call of its Co-Chairs. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of $5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Co-Chairs of the Committee. Individual expenses in excess of $5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 17th day of November, 2009.



Joe Hackney
Speaker

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

2009 – 2010

MEMBER	ASSISTANT	PHONE	OFFICE
Rep. Jennifer Weiss, Co Chair	Susan Doty	715-3010	532 LOB
Rep. William McGee, Co Chair	Jayne Nelson	733-5747	531 LOB
Rep. George Cleveland	Susan Horne	715-6707	504 LOB
Rep. Beverly Earle	Ann Raeford	715-2530	634 LOB
Rep. Chris Heagarty	Ruth Merkle	733-5602	2121 LB
Rep. Julia Howard	Renee Weaver	733-5904	1106 LB
Rep. Michael Wray	Mary Capps	733-5662	405 LOB

Susan Doty (Rep. Weiss)

From: Jayne Nelson (Rep. McGee)
Sent: Tuesday, January 05, 2010 4:20 PM
To: Jayne Nelson (Rep. McGee)
Subject: House Select Committee on Homeowners Associations Meeting January 13th

January 5, 2010

MEMORANDUM

TO: Members of the House Select Committee on Homeowners Associations

FROM: Representative Jennifer Weiss, Co-Chair
Representative William C. McGee, Co-Chair

SUBJECT: Meeting Notice

There will be a meeting of the House Select Committee on Homeowners Associations:

DATE: **January 13, 2010**

TIME: **1:00 pm**

LOCATION: **Room 421, Legislative Office Building**

Committee members, please advise Susan Doty, Committee Assistant, at (919) 715-3010, or e-mail weissla@ncleg.net if you are unable to attend.

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

Rep. Jennifer Weiss
Co-Chairman

Rep. William C. McGee
Co-Chairman

Wednesday, January 13, 2010
Representative Jennifer Weiss, Presiding

Room 421, Legislative Office Building
1:00 p.m.

I. Welcome and Introduction of Members

II. Charge of Committee
- Karen Cochrane-Brown, Research Division

III. Overview of Current Law and Recent Law Changes
- Martha Walston, Fiscal Research Division

IV. Comments

V. Future Meetings
- Public Hearing, 2:00 p.m., Feb. 2, 2010, Room 643 LOB
  Committee Meeting, 10:00 a.m., Feb. 16, 2010, Room 421 LOB
  Committee Meeting, 1:00 p.m., March 4, 2010, Room 421 LOB
  Committee Meeting, 1:00 p.m., March 31, 2010, Room 421 LOB
  Committee Meeting, 1:00 p.m., April 14, 2010, Room 421 LOB

VI. Adjournment

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

MINUTES
January 13, 2010

Representative Jennifer Weiss, Co-Chairman, called the initial meeting of the House Select Committee on Homeowners Associations to order at 1:05 p.m. Members present at the meeting were Co-Chairman William McGee, Representatives George Cleveland, Beverly Earle, Chris Heagarty, Julia Howard and Michael Wray. Staff members present were Karen Cochrane-Brown, Jennifer McGinnis, Bill Patterson, Martha Walston, Joe Moore and committee assistants Susan Doty and Jayne Nelson. Chairman Weiss thanked the Sergeants-at-Arms (see Attachment 1) and welcomed members and staff and visitors. Chairman Weiss announced that the committee will hold a public hearing on February 2, at 2:00 p.m. in Room 643 of the Legislative Office Building. She then asked members and staff to briefly introduce themselves. After introductions, Chairman Weiss asked the committee members to let their constituents know of the public hearing. Co-Chairman William McGee spoke and welcomed members and visitors. Visitors were asked to introduce themselves and to sign the Visitor Registration. (See Attachment 2)

Chairman Weiss then asked Karen Cochrane-Brown, Research Division staff, to explain the charge to the committee. (See Attachment 3)

Martha Walston, Fiscal Research Division staff, was asked to explain the North Carolina Planned Community Act and Condominium Act and the North Carolina Condominium Act. (See Attachment 4-brief form and full act)

Committee members were asked if they had questions. Representative Earle asked why a judicial foreclosure action was required in certain situations. Ms. Walston replied that if there is a lien on the property because of unpaid fines, interest on unpaid fines, or attorney's fees incurred by the homeowners association because of unpaid fines, then the lien may only be enforced by judicial foreclosure and not by power of sale. Judicial foreclosure is more costly and lengthy but provides more safeguards for the homeowner. Chairman Weiss said that the General Assembly put this requirement in place to give homeowners more protection and opportunity to be heard. This change was in response to a number of foreclosures that were occurring across the state. In Charlotte and other areas, houses were being foreclosed on because of fines from the homeowners association; the feeling was that there would be a couple of fines, legal fees and soon the homeowners were being foreclosed on.

Chairman Weiss said that a notice of the public hearing will be sent soon; she asked members to let the chairs, Ms. Cochrane-Brown or the committee assistants know specific issues they would like to see the committee address. Representative Earle responded that she continues to get mail regarding homeowners associations; the largest concern being about foreclosures. She stated that she feels this is an issue that the committee should deal with in depth especially when the amount of debt is greater than a certain amount.

Chairman McGee asked Ms. Walston if, on page 2, Article 2, Section 47F-2-117, there is a maximum percentage of votes that can be required when amending the declaration. Ms. Walston replied "it has to be 67% except when the declarations specify no maximum".

Chairman Weiss encouraged sharing of ideas and thoughts for future meetings with the committee and asked everyone to plan to attend the public hearing and to let constituents know about it. She reminded anyone who is interested in speaking at the public hearing to let the clerks know or to give their names to the clerks following the meeting.

There being no further questions or comments, Chairman Weiss adjourned the meeting at 1:55 p.m.

Chairman Jennifer Weiss

Susan Doty, Committee Clerk

Attachment #1 Sergeants-At-Arms
Attachment #2 Visitor Registration
Attachment #3 Charge to the Committee
Attachment #4 NC Planned Community Act and Condominium Act

Attachment #1

HOUSE PAGES

NAME OF COMMITTEE Study Commission Homeowners Assn DATE 1/13/10

1. Name: _____

   County: _____

   Sponsor: _____

2. Name: _____

   County: _____

   Sponsor: _____

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

SGT-AT-ARM

1. Name: David Shearon
2. Name: Rodney Finger
3. Name: _____
4. Name: _____

Attachment #2

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS - JANUARY 13, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
X John Bowdish	Pres. LML HOA
PAUL MENGERT	ASSOCIATION MANAGEMENT GROUP, Inc.
Jim Slaughter	Attorney
NORM LAWTON	HRW, Inc.
SARA Stebbins	Community Assoc Institute
Hope Carmichael	Attorney
Henry Jones	Attorney
Dana Starling	Homeowner PO Box 2947 Raleigh NC 27602
BLAIR WILLIAMS	Wake County Clerk
Susan Barnard	Homeowner / former HOA President

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS - JANUARY 13, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	AOC
Cady Thomas	NCAR
GREG FLYNN	SELF
Roger Knight	Attorney
Al Ripley	NC Justice Ctr
MICHAEL SHIFLETT	INTERNEIGHBORHOOD COUNCIL OF DURHAM, NC
Jessi Hayes	NC Home Builders Assn
Lisa Martin	NC HBA

Attachment #3

Office of Speaker Joe Hackney
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

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Effective this the 17th day of November, 2009.



Joe Hackney
Speaker

Attachment #4

NORTH CAROLINA PLANNED COMMUNITY ACT AND CONDOMINIUM ACT

Martha Walston, staff attorney

January 13, 2010 (revised)

The North Carolina Planned Community Act (Chapter 47F of the General Statutes) was enacted in 1998. A "planned community" is defined as real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. The purpose of the Act was to help planned communities move away from the common law doctrines associated with restrictive covenants in older communities and to recognize modern planned communities' fundamental difference with traditional residential subdivisions which look little like their modern day counterparts.

The North Carolina Condominium Act (Chapter 47C of the General Statutes) was enacted in 1986. A "condominium" is defined as real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Article 1 General Provisions

47F-1-102 Applicability

Applies to all planned communities created in NC on or after January 1, 1999.
Does NOT apply to a planned community that contains no more than 20 lots, or one in which all lots are restricted exclusively to nonresidential purposes unless the declaration provides or is amended to provide that the Chapter does apply.

The following sections of the Chapter apply to planned communities created before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary:

- 47F-3-102(1) through (6) and (11) through (17) Powers of owners' association
- 47F-3-103(f) Executive board members and officers
- 47F-3-107(a), (b), and (c) Upkeep of planned community; responsibility and assessments for damages
- 47F-3-107.1 Procedures for fines and suspension of planned community privileges or services
- 47F-3-108 Meetings
- 47F-3-115 Assessments for common expenses
- 47F-3-116 Lien for assessments
- 47F-3-118 Association records
- 47F-3-121 American and State flags and political sign displays

A planned community created prior to 1999, may elect to make the Chapter applicable by amending its declaration. This can be done by affirmative vote or

written agreement signed by lot owners of lots to which at least 67% of the votes in the association are allocated or any smaller majority the declaration specifies.

47F-1-103 Definitions
"Declaration" means any instruments, however denominated, that create a planned community and any amendments to those instruments.

47F-1-104 Variations

47F-1-106 Applicability of local ordinances, regulations, and building codes

47F-1-107 Eminent domain

Article 2. Creation, Alteration, and Termination of Planned Communities.
47F-2-101 Creation of the planned community
A declaration creating a planned community must be executed in the same manner as a deed and recorded in every county in which any portion of the planned community is located.

47F-2-103 Construction and validity of declaration and bylaws
In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Chapter.

47F-2-117 Amendment of declaration
Declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least 67% of the votes in the association are allocated, or any larger majority the declaration specifies, except where the terms of the declaration allow it to be amended by a declarant. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use. Every amendment to the declaration must be recorded in every county in which any portion of the planned community is located.

47F-2-118 Termination of planned community
Except in the case of taking of all lots by eminent domain, a planned community may be terminated only by agreement of lot owners of lots to which at least 80% of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the lots in the planned community are restricted exclusively to nonresidential uses.

47F-2-120 Master associations

47F-2-121 Merger or consolidation of planned communities

Article 3 Management of Planned Community

47F-3-101 Organization of owners' association

Membership of the association at all times shall consist exclusively of all the lot owners, or, following termination of the planned community, of all persons entitled to distributions of proceeds. Every association must be organized as a nonprofit corporation. (The Condominium Act provides that the association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit corporation.)

47F-3-102 Powers of owners' association

This statute sets out the powers that the association may exert unless the articles of incorporation or the declaration expressly provides to the contrary. In 2005, the General Assembly imposed a cap on the reasonable charges for late payment of assessments. The charge may not exceed the greater of $20 per month or 10% of any installment unpaid.

47F-3-103 Executive board members and officers

The executive board may not act unilaterally on behalf of the association to amend the declaration (47F-2-117), to terminate the planned community (47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (47F-3-103(e)) The executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term.

Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant. (The unit owners under the Condominium Act need at least a 67% vote of all persons present at the meeting.)

Within 30 days after the adoption of a proposed budget for the planned community, the executive board must provide to all lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The meeting of the lot owners to consider ratification of the budget may not be held less than 10 or more than 60 days after mailing of the summary and notice. A quorum is not required at this meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board. (The Condominium Act provides that the meeting for ratification of the budget must be not less than 14 or more than 30 days after mailing of the summary.) The declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant may appoint and remove officers and members of the executive board. Not later than the termination of any period of declarant control, the lot owners shall

elect an executive board of at least three members, at least a majority of whom shall be lot owners. The executive board shall elect the officers. (Guidelines for the ultimate end to declarant control are set out in the Condominium Act, but not in the Planned Community Act.) (see G.S. 47C-3-103(d)

In 2005, the General Assembly added language that the association shall publish the names and address of all officers and board members of the association within 30 days of their election.

47F-3-104 Transfer of special declarant rights

47F-3-105 Termination of contracts and leases of declarant

47F-3-106 Bylaws
This statute specifies matters that the bylaws of the association must provide

47F-3-107 Upkeep of planned community; responsibility and assessments for damages
If a lot owner is legally responsible for damage to a common element or if damage is inflicted on any lot by an agent of the association and the damage is less than the amount heard in small claims court ($5,000) the aggrieved party may request a hearing before an adjudicatory panel appointed by the executive board. If no adjudicatory panel is appointed, the executive board will conduct the hearing.

The Condominium Act states the claim must be under $500.

47F-3-107.1 Procedures for fines and suspension of planned community privileges or services
Unless there is a specific procedure for the imposition of fines or suspension of planned community privileges or services in the declaration, a hearing must be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended. The lot owner that is charged must be given notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision.

In 2005, language was added that any adjudicatory panel appointed by the executive board must be composed of members of the association who are not officers of the association or members of the executive board. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body.

Also in 2005, the fine that could be imposed was reduced from a maximum of $150 for each day after the decision that the violation occurs to a maximum of $100 for each day more than five days after the decision that the violation occurs.

47F-3-108 Meetings

The association must hold meetings at least once each year. Special meetings may be called by the president, a majority of the executive board, or by lot owners having 10%, or any lower percentage specified in the bylaws, of the votes in the association. (Condominium Act provides for 20% or less.) Notice of any meeting must be sent not less then 10 or more than 60 days (Condominium Act is 50 days) in advance of the meeting. Notice must be sent by hand, mail, or electronically to lot owners. Notice must include the time and place of the meeting and items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, and budget changes, and any proposal to remove a director or officer.

In 2005, language was added that meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of a meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak.

Meetings of the association and executive board are to be conducted in accordance with Roberts' Rules of Order Newly Revised, unless the bylaws state otherwise.

47F-3-109 Quorum

Unless the bylaws provide otherwise, a quorum is present at a meeting of the association if persons entitled to cast 10% (20% in Condominium Act) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. This requirement is low because many planned communities are resort communities where many owners may reside elsewhere.

Unless the bylaws specify a larger percentage, a quorum is present at a meeting of the executive board if persons entitled to cast 50% of the votes of that board are present at the beginning of the meeting. [If a quorum is not present at any meeting, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting will be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision will continue to reduce the quorum by 50% from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.] The bracketed language is not in the Condominium Act.

47F-3-110 Voting proxies

If only one of the multiple owners of a lot is present at an association meeting, the owner who is present is entitled to cast all votes allocated to that lot. If more than one of the multiple owners are present, the votes allocated to that lot may be cast only in

accordance with the agreement of a majority in interest of the multiple owners, unless the declaration or bylaws state otherwise. Votes may be cast by proxy. Lot owners must be given notice of all meetings at which lessees may be entitled to vote.

47F-3-111 Tort and contract liability

The declarant, and not the association or any lot owner, is liable for the declarant's torts in connection with the planned community. Also an action alleging wrongdoing against the association must be brought against the association and not against a lot owner. The Condominium Act also has clarifying language regarding the liability of the declarant for a wrong committed during declarant control: "If an action is brought against the association for a wrong which occurred during any period of declarant control, and if the association gives the declarant who then controlled the association reasonable notice of and an opportunity to defend against the action, such declarant is liable to the association:

1. for all tort losses not covered by insurance carried by the association suffered by the association or that unit owner, and
2. for all losses which the association would not have incurred but for a breach of contract. Nothing in this subsection shall be construed to impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant contol.

Also missing from the Planned Community Act, but in the Condominium Act, is language making the declarant liable for litigation expenses and reasonable attorneys' fees incurred by the association and a reference to the nature of liens resulting from judgments against the association.

47F-3-112 Conveyance or encumbrance of common elements

Authorizes the sale or encumbrance of part of the common elements upon the agreement in writing of persons holding 80% of the votes of the association and provides that a higher percentage can be specified in the declaration. The association can contract to convey and convey on behalf of the lot owners. Unlike the Condominium Act where unit owners have an interest in the common elements as tenants in common, there is no need for lot owners in a planned community to execute a deed.

47F-3-113 Insurance

47F-3-114 Surplus funds

47F-3-115 Assessments for common expenses

All common expenses are assessed against all lot owners in accordance with the terms of the declaration. Any past-due common expense assessment or installment bears interest at the rate established by the association not to exceed 18% per year.

The following assessments are not imposed against all lots:

1. Any common expense associated with the maintenance, repair replacements of a limited common element shall be assessed against the lots to which that

limited common element is assigned, equally in any other proportion that the declaration provides.

2. Any common expense or portion thereof benefiting fewer than all the lots shall be assessed exclusively against the lots benefited.
3. The costs of insurance shall be assessed in proportion to risk and costs of utilities shall be assessed in proportion to usage.

If a common expense is caused by negligence or misconduct of a lot owner or occupant, the association may asses that expense exclusively against that lot owner or occupant's lot.

47F-3-116 Lien for assessments

Any assessment against a lot that remains unpaid for 30 days or more becomes a lien on that lot when a lien is filed with the clerk of superior court. Prior to 2005, the association's lien on the lot could be foreclosed in like manner as a mortgage on real estate under power of sale. This is the primary method of foreclosure in North Carolina. There must be notice and hearing procedures before the clerk of court. The notice must be served not less than 10 days prior to the due process hearing before the clerk of court. Foreclosure by power of sale avoids a lengthy and costly foreclosure. If the clerk of court authorizes a sale, then a notice of sale will be published in a newspaper and at the courthouse door.

In 2005, the General Assembly made the following changes to 47F-3-116:

- Prohibited the use of foreclosure by power of sale if the debt securing the lien consisted solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association may enforce these liens only by judicial foreclosure. These actions must be brought in court and there are pleadings. The procedure is more costly and lengthy. The order to sale the property may be by public or private sale. Any sale must be confirmed by the court.
- Prohibited an association from levying, charging, or attempting to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Liens secured by nonpayment of these fees may only be enforced by judicial foreclosure.
- Prior to 2005, the judgment on the lien could include costs and reasonable attorneys' fees for the prevailing party. In the 2005 legislation, the lot owner may not be required to pay attorneys' fees and court costs until the owner is notified in writing of the association's intent to seek payment of these fees and costs. The notice must be sent by mail to the property address and, if different, to the mailing address of the unit owner in the association's records. The notice must state the outstanding balance and that the unit owner has 15 days from the mailing of the notice to pay the outstanding balance without the attorneys' fees and court costs. If the owner does not contest the collection of debt and enforcement of lien after the expiration of the 15 days, then reasonable attorneys' fees cannot exceed $1,200. The notice must also inform the unit owner of the opportunity to contact a representative of the association

to discuss a payment schedule for the outstanding balance and provide the name and telephone number of the representative. The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of the outstanding balance in installment payments.

- A claim of lien must set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed

In 2009, the General Assembly made the following changes to 47F-3-116:

- Added language that the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Therefore, the Association should act on any information that managers, board members or attorneys may have that the mailing address in the Association's records is not accurate. This would include knowledge of returned mail from the post office, knowledge that the property is vacant or knowledge that there is a tenant occupying the property rather than the owner. No fewer than 15 days prior to filing the lien, the association must mail a statement of the assessment amount due by first class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot.
- Added language that the first page of the claim of lien must contain the following statement in boldface, capital letters: **THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.** Service of the claim of lien must be both by regular mail and by either certified mail, return receipt requested, or by overnight delivery with a qualified carrier.

47F-3-118 Association records

Prior to 2005, the association was required to keep financial records and make them reasonably available for examination by lot owners and their authorized agents. Within 10 days of receipt of a written request the association has to furnish to the lot owner a statement setting forth the amount of unpaid assessments and other charges against a lot

In 2005, the General Assembly made the following changes:

- Records of meetings of the association and executive board must be made reasonably available for examination by a lot owner and authorized agent. If the bylaws do not specify particular records to be maintained, the association must keep accurate records of all cash receipts and expenditures and all assets and liabilities. The association must also make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates.

- Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.
- Prohibits financial payments, including payments in the forms of goods and services, to an officer or member of the association's board unless the payments are provided by the bylaws or are made for services and expenses on behalf of the association which are approved in advance by the executive board.

47F-3-119 Association as trustee

47F-3-120 Declaration limits on attorneys' fees

Except as provided in 47F-3-116, in an action to enforce provisions of the articles of incorporation, declaration, bylaws, or adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed in the declaration.

47F-3-121 American and State flags and political sign displays

In 2005, language was added to restrict ability of covenants to regulate the display of a U.S. flag or North Carolina flag that is no greater than four feet by six feet unless (1) for restrictions registered prior to 2005, the restriction specifically uses the terms of flag of the USA, American flag, US flag, or North Carolina flag, and (2) for restrictions registered after 2005, the following restriction must be written in boldface, capital letters on the first page of the deed: **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**

The language restricts the ability of covenants to regulate the indoor or outdoor display of a political sign unless (1) for restrictions registered prior to 2005, the restriction specifically uses the term "political signs", and (2) for restrictions registered after 2005, the following restriction is written on the first page of the deed of conveyance in boldface, capital letters" **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

Even when display of political signs is permitted, an association may prohibit the display of a sign earlier than 45 days before the election and later than 7 days after the election. The association may also regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than the local government ordinance regulating size and number of political signs on residential property. If there is no local government ordinance, the association must permit at least one political sign with the maximum dimensions of 24 inches by 24 inches.

47F-3-122 Irrigation of landscaping

The declaration of covenants cannot require irrigation of landscaping during a period that the area in which the association is located has been designated an area of severe,

extreme, or exceptional drought and the Governor, a State agency, or unit of local government has imposed water conservation measures unless:

- For declarations of covenants registered prior to October 1, 2008, the covenant specifically requires irrigation of landscaping notwithstanding water conservation measures imposed by the Governor, a State agency or unit of local government. An owner cannot be fined, unless the covenant specifically authorizes fines and penalties.
- For covenants registered on or after October 1, 2008, the covenant must specifically state that any requirement to irrigate is suspended to the extent the requirement would be prohibited by the Governor, a State agency, or unit of local government. Fines and penalties may not be imposed unless specifically authorized, and the authorization must be written in boldface type, capital letters on the front page of the declarations of covenants.

Other 2009 changes

S.L. 2009-553 (HB 1387) – invalidates any new restrictive covenants, created on or after December 1, 2009, if those covenants would prohibit the installation of solar collector devices (solar panels, receptors for solar appliances, etc). This law does not apply to any existing restrictions contained in declarations prior to December 1, 2009, and it does not apply in any event to multi-story "stacked" condominiums.

S.L. 2009-310 (HB 182) - Allows the placement of traffic tables or traffic calming devices on State-maintained subdivision streets if the devices are paid for and maintained by a homeowner's association or pursuant to a neighborhood contractual agreement. The homeowner's association must have the written support of at least 70% of the member property owners, and the association must post a performance board with the Department of Transportation to fund maintenance or removal of the tables or devices if the association fails to maintain them or is dissolved. The bond must remain in place for three years from the date of installation. Traffic calming devices include speed bumps, speed humps (wider than speed bumps) and traffic tables (very wide speed humps that are flat on top).

HB 762 would have established the community association manager's licensure act. The intent of the act was to protect the public from persons unqualified to provide community association management and from unprofessional conduct by persons licensed under this Article. This bill was never heard in committee.

Attachment # 4

Chapter 47C.

North Carolina Condominium Act.

Article 1.

General Provisions.

§ 47C-1-101. Short title.

This chapter shall be known and may be cited as the North Carolina Condominium Act. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 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-3-116 (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.

(b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to condominiums created after October 1, 1986 and do not invalidate any amendment to the declaration, bylaws, and plats and plans of any condominium created on or before October 1, 1986 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this State, but the public offering statement provisions (G.S. 47C-4-102 through 47C-4-108) apply to all contracts for the dispositions thereof signed in this State by any party unless exempt under G.S. 47C-4-101(b). (1985 (Reg. Sess., 1986), c. 877, s. 1; 1995, c. 509, s. 135.1(h); 2002-112, s. 1; 2004-109, s. 1; 2005-422, s. 19.)

§ 47C-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent (20%) of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interests in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Association" or "unit owners' associations" means the unit owners' associations organized under G.S. 47C-3-101.

(4) "Common elements" means all portions of a condominium other than the units.

(5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to G.S. 47C-2-107.

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(8) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers or by persons who occupy with the consent of purchasers.

(9) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan offers to dispose of his or its interest in a unit not previously disposed of or (ii) reserves or succeeds to any special declarant right.

(10) "Declaration" means any instruments, however denominated, which create a condominium, and any amendments to those instruments.

(11) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium.

(12) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(13) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(14) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(15) "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(16) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of G.S. 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

(17) "Master association" means an organization described in G.S. 47C-2-120, whether or not it is also an association described in G.S. 47C-3-101.

(18) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

(19) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(20) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than five years, or (ii) as security for an obligation.

(21) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(22) "Residential purposes" means use for dwelling or recreational purposes, or both.

(23) "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the

declaration (G.S. 47C-2-109); to exercise any development right (G.S. 47C-2-110); to maintain sales offices, management offices, signs advertising the condominium, and models (G.S. 47C-2-115); to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (G.S. 47C-2-116); to make the condominium part of a larger condominium (G.S. 47C-2-121); or to appoint or remove any officer of the association or any executive board member during any period of declarant control (G.S. 47C-3-103(d)).

(24) "Time share" means a "time share" as defined in G.S. 93A- 41(9).

(25) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to (G.S. 47C-2- 105(a)(5).

(26) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

(27) "Lessee" means the party entitled to present possession of a leased unit whether lessee, sublessee or assignee. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-1-104. Variation; power of attorney or proxy to declarant.

(a) Except as specifically provided in specific sections of this chapter, the provisions of this chapter may not be varied by the declaration or bylaws.

(b) The provisions of this chapter may not be varied by agreement; however, after breach of a provision of this chapter, rights created hereunder may be knowingly waived in writing.

(c) If a declarant, in good faith, has attempted to comply with the requirements of this chapter and has substantially complied with the chapter, nonmaterial errors or omissions shall not be actionable.

(d) Notwithstanding any other provision of this chapter, a declarant may not act under a power of attorney or proxy or use any other device to evade the limitations or prohibitions of this chapter, the declaration, or the bylaws. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-1-105. Separate titles and taxation.

(a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no developmental rights.

(c) Any portion of the common elements for which the declarant has reserved any developmental right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-1-106. Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, or building code or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a substantially similar development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, or building code or other real estate use law, ordinance, or regulation. No local ordinance or regulation may require the recordation of a declaration prior to the date required by this chapter. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-1-107. Eminent domain.

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Unless the condemnor acquires the right to use the unit's interest in common elements, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking exclusive of the unit taken, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and of its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (2) the portion of the allocated interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award not payable to unit owners under subsection (a) must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be apportioned among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court decree shall be recorded in every county in which any portion of the condominium is located. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-1-108. Supplemental general principles of law applicable.

The principles of law and equity supplement the provisions of this chapter, except to the extent inconsistent with this chapter. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-1-109. Inconsistent time share provisions.

The provisions of this Chapter shall apply, so far as appropriate, to every time share program or project created within this State after October 1, 1986, except to the extent that specific statutory provisions in Chapter 93A are inconsistent with this Chapter, in which case the provisions of Chapter 93A shall prevail. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

Article 2.

Creation, Alteration, and Termination of Condominiums.

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

(a) A declaration creating a condominium shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the Grantee index in the name of the condominium and in the Grantor index in the name of each person executing the declaration.

(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an architect licensed under the provisions of Chapter 83 [83A] of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-102. Unit boundaries.

Except as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit; and all other portions of such walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, or rules and regulations adopted pursuant to G.S. 47C-3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure to comply with this chapter impairs marketability shall be determined by the law of this State relating to marketability. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-104. Description of units.

A description of a condominium unit which sets forth the name of the condominium, the recording data for the declaration, and the identifying number of the unit or which otherwise complies with the general requirements of the laws of this State concerning description of real property is sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-105. Contents of declaration.

(a) The declaration for a condominium must contain:

(1) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium", and the name of the association;

(2) The name of every county in which any part of the condominium is situated;

(3) A legally sufficient description of the real estate included in the condominium;

(4) A statement of the maximum number of units which the declarant reserves the right to create;

(5) A description (by reference to the plats or plans described in G.S. 47C-2-109) of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) A description of any limited common elements, other than those specified in subsections 47C-2-102(2) and (4), as provided in G.S. 47C-2-109(b)(7);

(7) A description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in subsections 47C-2-102(2) and (4), together with a statement that they may be so allocated;

(8) A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect, together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a

statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) Any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;

(11) An allocation to each unit of the allocated interests in the manner described in G.S. 47C-2-107;

(12) Any restrictions on use, occupancy, or alienation of the units;

(13) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and

(14) All matters required by G.S. 47C-2-106, 47C-2-107, 47C-2- 108, 47C-2-109, 47C-2-115, 47C-2-116, and 47C-3-103(d).

(b) The declaration may contain any other matters the declarant deems appropriate. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-106. Leasehold condominiums.

(a) Any lease, or a memorandum thereof, the expiration or termination of which may terminate the condominium or reduce its size shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(1) Where the complete lease may be inspected;

(2) The date on which the lease is scheduled to expire;

(3) A legally sufficient description of the real estate subject to the lease;

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights;

(5) Any right of the unit owners to remove any improvements after the expiration or termination of the lease or a statement that they do not have those rights; and

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who, after demand, makes timely payment of his share of the rent determined in proportion to his common element interest and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant under the lease.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with G.S. 47C-1-107(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-107. Allocation of common element, interests, votes, and common expense liabilities.

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent (100%) if stated as percentages. If the declaration allocates to each of the units a fraction or percentage of ownership of the common elements that results in an actual total of such fractions or percentages that is greater or less than the actual whole of such ownership, each unit's ownership of the common elements shall be automatically reallocated so that each unit is allocated the same fraction or percentage of ownership of the actual whole as that unit had of the actual total that was greater or less than the actual whole. The declarant or the association shall file an amendment to the declaration reflecting such reallocation which amendment need not be executed by any other party.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-108. Limited common elements.

(a) Except for the limited common elements described in subsections 47C-2-102(2) and (4), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the unanimous consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by all the unit owners between or among whose units the reallocations is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment shall be recorded in the same manner as a deed in the names of the parties and the condominium.

(c) A common element not previously allocated as a limited common element may not be so allocated except by unanimous consent or pursuant to provisions in the declaration made in accordance with G.S. 47C-2-105(a)(7). All such allocations shall be made by amendments to the declaration and shall become effective in accordance with G.S. 47C- 2-117(c). (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-109. Plats and plans.

(a) The declarant shall file with the register of deeds in each county where the condominium is located the condominium's plat or plan prepared in accordance with this section. The plat or plan shall be considered a part of the declaration but shall be recorded separately, and the declaration shall refer by number to the file where such plat or plan is recorded. Each plat or plan shall be kept by the register of deeds in a separate file, indexed in the same manner as a conveyance entitled to be recorded, numbered serially in the order of receipt, and designated "Condominium" with the name of the building, if any, and shall contain a reference to the book and page numbers and date of the recording of the declaration. Each plat or plan must contain a certification by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes that it contains all of the information required by this section.

(b) Each plat or plan or combination thereof must show:

(1) The name and a survey or general schematic map of the entire condominium;

(2) The location and dimensions of all real estate not subject to development rights or subject only to the development right to withdraw and the location and dimensions of all existing improvements within that real estate;

(3) The location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) The extent of any encroachments by or upon any portion of the condominium;

(5) The location and dimensions of all easements having specific location and dimensions and serving or burdening any portion of the condominium;

(6) The verified statement of an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes certifying that such plats or plans fully and accurately depict the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, as built;

(6a) The certificate by a registered land surveyor licensed under the provisions of Chapter 89C of the General Statutes stating that the plats or plans accurately depict the legal boundaries and the physical location of the units and other improvements relative to those boundaries;

(7) The locations and dimensions of limited common elements; however, parking spaces and the limited common elements described in subsections 47C-2-102 (2) and (4) need not be shown, except for decks, stoops, porches, balconies, and patios;

(8) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) The distance between noncontiguous parcels of real estate comprising the condominium;

(10) Any unit in which the declarant has reserved the right to create additional units or common elements.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".

(d) Upon exercising any development right, the declarant shall record either new plats

and plans necessary to conform to the requirements of subsections (a), (b), and (c) or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(e) In order to be recorded, plats or plans filed shall:

(1) Be reproducible plats or plans on cloth, linen, film, or other permanent material and be submitted in that form; and

(2) Have an outside marginal size of not more than 21 inches by 30 inches nor less than eight and one-half inches by 11 inches, including one and one-half inches for binding on the left margin and a one-half inch border on each of the other sides. Where size of the buildings or suitable scale to assure legibility require, plats or plans may be placed on two or more sheets with appropriate match lines.

(f) The fee for recording each plat or plan sheet submitted shall be as prescribed by G.S. 161-10(a)(3). (1985 (Reg. Sess., 1986), c. 877, s. 1; 1987, c. 282, s. 8; 1989, c. 571.)

§ 47C-2-110. Exercise of development rights.

(a) To exercise any development right reserved under G.S. 47C-2-105(a)(8), the declarant shall record an amendment to the declaration (G.S. 47C-2-117) and comply with G.S. 47C-2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection (c), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by G.S. 47C-2-108 (Limited Common Elements).

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by, and is in compliance with, G.S. 47C-2-105 and, if a leasehold condominium, G.S. 47C-2-106 and also if the plats and plans include all matters required by G.S. 47C-2-109. This provision does not extend the limit on the exercise of developmental rights imposed by the declaration pursuant to G.S. 47C-2-105(a)(8).

(c) When a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; or

(2) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides pursuant to G.S. 47C-2-105(a)(8) that all or a portion of

the real estate is subject to the development right of withdrawal:

(1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, no part of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) If a portion or portions are subject to withdrawal, no part of a portion may be withdrawn after a unit in that portion has been conveyed to a purchaser. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-111. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without permission of the association; and

(3) May, after acquiring an adjoining unit, remove or alter any intervening partition or create apertures therein, even if the partition is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-112. Relocation of boundaries between adjoining units.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated upon application to the association by the owners of those units. Any such application to the association must be in such form and contain such data as may be reasonably required by the association and be accompanied by a plat prepared by an architect licensed under the provisions of Chapter 83 [83A] of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes detailing the relocation of the boundaries between the affected units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable, the association, at the expense of the owners filing the application, shall prepare and record an amendment to the declaration that identifies the units involved, states the reallocations, is executed by those unit owners and the association, contains words of conveyance, and is indexed in the name of the grantor and the grantee by the register of deeds.

(b) The association, at the expense of the unit owners filing the application, shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-113. Subdivision of units.

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association, at the expense of the unit owner, shall

prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-114. Easement for encroachments.

(a) To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

(b) With respect to all condominiums created prior to October 1, 1986, the provisions of subsection (a) of this section shall be deemed to apply to such condominiums, unless an action asserting otherwise shall have been brought within six months from October 1, 1986. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-115. Use for sales purposes.

A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other State law and to local ordinances. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-116. Easement to facilitate exercise of special declarant rights.

Subject to the provisions of the declaration, a declarant has such easements through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights whether arising under this Chapter or reserved in the declaration. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-117. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under G.S. 47C-2-109(d) or 47C-2-110, the association under G.S. 47C-1-107, 47C-1-106(d), 47C-2-112(a), or 47C-2-113, or certain unit owners under G.S. 47C-2-108(b), 47C-2-112 (a), 47C-2-113(b), or 47C-2-118(b), and except as limited by subsection (d), the declaration may be amended only by affirmative vote of or a written agreement signed by, unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located and is effective only upon recordation. An amendment shall be indexed in the Grantee's index in the name of the condominium and the association and in the Grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this Chapter, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interest of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-118. Termination of condominium.

(a) Except in the case of a taking of all the units by eminent domain (G.S. 47C-1-107), a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (h). Unless otherwise specified in the termination agreement, as long as the association holds title to

the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this Chapter or the declaration.

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(h) The respective interests of unit owners referred to in subsections (e), (f) and (g) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market value of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(i) Except as provided in subsection (j), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been released, the parties foreclosing the lien or encumbrance may upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-119. Reserved for future codification purposes.

§ 47C-2-120. Master associations.

(a) If the declaration for a condominium provides that any of the powers described in G.S. 47C-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation (or unincorporated association) which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation (or unincorporated association), except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in G.S. 47C-3-101, it may exercise the powers set forth in G.S. 47C-3-102(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in G.S. 47C-3-103, 47C-3-108, 47C-3-109, and 47C-3-110 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this Chapter.

(e) Notwithstanding the provisions of G.S. 47C-3-103(f) with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in G.S. 47C-3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board.

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-2-121. Merger or consolidation of condominiums.

(a) Any two or more condominiums may, by agreement of the unit owners as provided in subsection (b), be merged or consolidated into a single condominium. In the event of a merger

or consolidation, unless the agreement otherwise provides, the resultant condominium shall be, for all purposes, the legal successor of all of the pre-existing condominiums, and the operations and activities of all associations of the pre-existing condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all pre-existing associations.

(b) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the pre-existing condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be executed in the same manner as a deed and recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (i) by stating such reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the pre-existing condominiums and providing that the portion of such percentages allocated to each unit formerly comprising a part of such pre-existing condominium shall be equal to the percentages of allocated interests allocated to such unit by the declaration of the pre-existing condominiums. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

Article 3.

Management of the Condominium.

§ 47C-3-101. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2006-226, s. 4.)

§ 47C-3-102. Powers of unit owners' association.

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;
(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
(3) Hire and terminate managing agents and other employees, agents, and independent contractors;
(4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;

(11) Impose charges for late payment of assessments, not to exceed the greater of twenty dollars ($20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer, and levy reasonable fines not to exceed one hundred dollars ($100.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association.

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by G.S. 47C-4-109, or statements of unpaid assessments;

(13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;

(14) Assign its right to future income, including the right to receive common expense assessments.

(15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and

(16) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2004-109, s. 2; 2005-422, ss. 10, 11.)

§ 47C-3-103. Executive board members and officers.

(a) Except as provided in the declaration, the bylaws, or subsection (b) or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the unit owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

(b) The executive board may not act on behalf of the association to amend the declaration

(G.S. 47C-2-117), to terminate the condominium (G.S. 47C-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47C-3-103(e) and (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 120 days after conveyance of seventy-five percent (75%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than 60 days after conveyance of twenty-five percent (25%) of the units (including units which may be created pursuant to special rights) to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of fifty percent (50%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by unit owners other than the declarant.

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, ss. 12, 13.)

§ 47C-3-104. Transfer of special declarant rights.

(a) No special declarant right (G.S. 47C-1-103(23)) created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer, including, but not limited to, liability or obligations relating to warranties. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(2) If the successor to any special declarant right is an affiliate of a declarant (G.S. 47C-1-103(1)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant, or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant the declarant ceases to have any special declarant rights.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor related to the condominium.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) and (4) who is not an affiliate of a declarant, is subject to all obligations and liabilities:

a. On a declarant which relate to his exercise or nonexercise of special declarant rights; or

b. On his transferor, other than:

(i) Misrepresentations by any prior declarant;

(ii) Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

(iii) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (G.S. 47C-2-115), if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights other than the right held by his transferor to control the executive board in accordance with the provisions of G.S. 47C-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under G.S. 47C-3-103 (d). (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-105. Termination of contracts and leases of declarant.

If entered into by or on behalf of the association before the executive board elected by the unit owners pursuant to G.S. 47C-3-103(f) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to G.S. 47C-3-103(f) takes office upon not less than 90 days' notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the association before the executive board elected by the unit owners pursuant to G.S. 47C-3-103 (f) takes office. Failure of the contract to contain such a provision shall not effect the rights of the association under this section. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-106. Bylaws.

(a) The bylaws of the association shall provide for:

(1) The number of members of the executive board and the titles of the officers of the association;

(2) Election by the executive board of the officers of the association;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) The method of amending the bylaws.

(b) Any other matters the association deems necessary or appropriate. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-107. Upkeep; damages; assessments for damages, fines.

(a) Except as provided in G.S. 47C-3-113(h), the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47C-3-115(b). Each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and when necessary to another unit owner access through his unit reasonably necessary for any such maintenance, repair or replacement activity.

(b) If damage, for which a unit owner is legally responsible and which is not covered by insurance provided by the association pursuant to G.S. 47C-3-113 is inflicted on any common element, the association may direct such unit owner to repair such damage or the association may itself cause the repairs to be made and recover the costs thereof from the responsible unit owner.

(c) If damage is inflicted on any unit by an agent of the association in the scope of his activities as such agent, the association is liable to repair such damage or to reimburse the unit owner for the cost of repairing such damages. The association shall also be liable for any losses to the unit owner.

(d) The bylaws of the association may in cases when the claim under subsection (b) or (c) is five hundred dollars ($500.00) or less provide for hearings before an adjudicatory panel to determine if a unit owner is responsible for damages to any common element or whether the association is responsible for damages to any unit. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess a liability for each damage incident not in excess of five hundred dollars ($500.00) against each unit owner charged or against the association. Liabilities of unit owners so assessed shall be assessments secured by lien under G.S. 47C- 3-116. Liabilities of the association may be offset by the unit owner against sums owing the association and if so offset shall reduce the amount of any lien of the association against the unit at issue.

(e) The declarant alone is liable for maintenance, repair and all other expenses in connection with real estate subject to development rights. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-107.1. Procedures for fines and suspension of condominium privileges or services.

Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body. (1985 (Reg. Sess., 1986), c. 877, s. 1; 1997-456, s. 27; 2005-422, s. 14.)

§ 47C-3-108. Meetings.

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2004-109, s. 5; 2005-422, s.

15.)

§ 47C-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board of persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-110. Voting; proxies.

(a) If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration or bylaws expressly provides otherwise. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person presiding over a meeting of the association. A proxy is void if it is not dated. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (i) the provisions of subsection (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in G.S. 47C-3-108, of all meetings at which lessees may be entitled to vote.

(d) No votes allocated to a unit owned by the association may be cast.

(e) The declaration may provide that on specified issues only a defined subgroup of unit owners may vote provided:

(1) The issue being voted on is of special interest solely to members of the subgroup; and

(2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those unit owners entitled to vote.

(f) For purposes of subdivision (e)(1) above an issue to be voted on is not of special interest solely to a subgroup if it substantially affects the overall appearance of the condominium or substantially affects living conditions of unit owners not included in the voting subgroup. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-111. Tort and contract liability.

(a) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association must be brought against the association and not against a unit owner.

(c) If an action is brought against the association for a wrong which occurred during any period of declarant control, and if the association gives the declarant who then controlled the association reasonable notice of and an opportunity to defend against the action, such declarant is liable to the association:

(1) for all tort losses not covered by insurance carried by the association suffered by the association or that unit owner, and

(2) for all losses which the association would not have incurred but for a breach of contract. Nothing in this subsection shall be construed to impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

(d) In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by G.S. 47C-3-117 (Other Liens Affecting the Condominium). (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-112. Conveyance or encumbrance of common elements.

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; provided, that all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Distribution of the proceeds of the sale of a limited common element shall be as provided by agreement between the unit owners to which it is allocated and the association. Proceeds of the sale or financing of a common element (other than a limited common element) shall be an asset of the association.

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power

to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-113. Insurance.

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent available:

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsection (a) or (b) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner or members of his household;

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subsections (a)(1) and (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the

repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the unit owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners of units not to be rebuilt or owners assigned to limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to lienholders, as their interest may appear, and (3) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interest may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under G.S. 47C-1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, G.S. 47C-2-118 governs the distribution of insurance proceeds if the condominium is terminated.

(i) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use. (1985 (Reg. Sess., 1986), c. 877, s. 1; 1998-211, s. 8(a)-(c).)

§ 47C-3-114. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provisions for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-115. Assessments for common expense.

(a) Until the association makes a common expense assessment, the declarant shall pay all the common expenses. After any assessment has been made by the association, assessments

thereafter must be made at least annually by the association.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to G.S. 47C- 2-107(a). Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) per year.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(3) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association (G.S. 47C-3-117(a)) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-116. Lien for assessments.

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against

the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47C-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, s. 16; 2006-226, s. 14(a).)

§ 47C-3-117. Other liens affecting the condominium.

(a) A judgment for money against the association is not a lien on the common elements, but if docketed is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Notwithstanding the provisions of subsection (a), if the association has granted a security interest in the common elements to a creditor of the association pursuant to G.S. 47C-3-112, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) A judgment against the association shall be indexed in the name of the condominium and the association and, if so indexed, is notice of the lien against the units. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-118. Association records.

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

(b) The association, upon written request, shall furnish a unit owner or the unit owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made

to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, s. 17.)

§ 47C-3-119. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee under G.S. 47C-2-118 following termination or G.S. 47C-3-113 for insurance proceeds, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as such trustee. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-3-121. American and State flags and political sign displays.

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag;
3. United States flag; or
4. North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA".**

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term "political signs".

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS"**.

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others. (2005-422, s. 18; 2006-226, s. 14(b).)

§ 47C-3-122. Irrigation of landscaping.

Notwithstanding any provision in any declaration of covenants, no requirement to irrigate landscaping shall be construed to:

(1) Require the irrigation of landscaping, during any period in which the U.S. Drought Monitor, as defined in G.S. 143-350, or the Secretary of Environment and Natural Resources has designated an area in which the association is located as an area of severe, extreme, or exceptional drought and the Governor, a State agency, or unit of local government has imposed water conservation measures applicable to the area unless:

a. For covenants registered prior to October 1, 2008, the covenant specifically requires the irrigation of landscaping notwithstanding water conservation measures imposed by the Governor, a State agency, or unit of local government. The association may not fine or otherwise penalize an owner of land for violation of an irrigation requirement during a period of drought as designated under this subdivision, unless the covenant specifically authorizes fines or other penalties.

b. For covenants registered on or after October 1, 2008, the covenant must specifically state that any requirement to irrigate landscaping is suspended to the extent the requirement would otherwise be prohibited during any period in which the Governor, a State agency, or unit of local government has imposed water conservation measures. The association may not fine or otherwise penalize an owner of land for violation of an irrigation requirement during a drought designated under this subdivision, unless the covenant authorizes the fines or other penalties. This authorization must be written on the first page of the covenant in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the declarations of covenants.

(2) For purposes of this section, the term "landscaping" includes lawns, trees, shrubbery, and other ornamental or decorative plants. (2008-143, s. 19(a).)

Article 4.

Protection of Purchasers.

§ 47C-4-101. Applicability; waiver.

(a) This Article applies to all units subject to this chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of a disposition which is:

(1) Gratuitous;
(2) Pursuant to court order;
(3) By a government or governmental agency;
(4) By foreclosure or deed in lieu of foreclosure;
(5) To a person in the business of selling real estate who intends to offer those units to purchasers; or
(6) Subject to cancellation at any time for any reason by the purchasers without penalty. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-102. Liability for public offering statement requirements.

(a) Except as provided in subsection (b), a declarant must, prior to the offering of any interest in a unit to the public, prepare a public offering statement conforming to the requirements of G.S. 47C- 4-103, 47C-4-104, 47C-4-105, and 47C-4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. In the event of any such transfer, the transferor must provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in G.S. 47C-4-108(a). The person who prepared all or a part of or delivered the public offering statement is subject to G.S. 47C-4-117 for any false or misleading statement set

forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of or deliver a public offering statement, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission. A declarant, who has transferred responsibility for preparation of all or a part of the public offering statement under subsection (b), shall be liable when a false or misleading statement in the public offering statement prepared by another results from the declarant's failure to provide the information required in subsection (b).

(d) If a unit is a part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of G.S. 47C-4-103, 47C-4-104, 47C-4-105, and 47C-4-106 as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 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 other land 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.)

§ 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.)

§ 47C-4-105. Same; time share.

(a) If the declaration provides that ownership or occupancy of any units are or may be owned in time shares, the public offering statement shall disclose, in addition to the information required by G.S. 47C-4-103:

(1) The number and identity of units in which time shares may be created;

(2) The total number of time shares that may be created;
(3) The minimum duration of any time shares which may be created; and
(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in G.S. 47C-3-116.

(b) The provisions of subsection (a) apply to all purchasers of units in the condominium. In addition, the purchaser of time shares shall receive the information required by G.S. 93A-44. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-106. Conversion buildings.

Condominiums containing conversion buildings shall be subject to the provisions of Article 2 of Chapter 47A. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-107. Same; condominium securities.

(a) If an interest in a condominium is registered with the Securities and Exchange Commission of the United States, a declarant satisfies the requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission to the extent such statement provides the information required by G.S. 47C-4-103, 47C-4-104, 47C-4-105 and 47C-4-106.

(b) The North Carolina Securities Act, Chapter 78A, shall apply to condominiums deemed to be investment contracts or to other securities offered with or incident to a condominium. In the event of such applicability of the North Carolina Securities Act, any real estate broker or salesman registered under Article 1 of Chapter 93A shall not be subject to the provisions of G.S. 78A-36. The exemption provided by the preceding sentence shall not apply to any person who is required to register with the Securities Exchange Commission as a broker or dealer under the Securities and Exchange Act of 1934. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-108. Purchaser's right to cancel.

(a) A person required to deliver a public offering statement pursuant to G.S. 47C-4-102 (c) shall provide a purchaser of a unit or the spouse of such purchaser with a copy of the public offering statement and all amendments thereto before a contract to purchase the unit is executed. No conveyance pursuant to the contract to purchase may occur until seven calendar days following the execution of the contract and a purchaser has the absolute right to cancel the contract at any time during this seven calendar period. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-109. Resales of units.

Except in the case of a sale where delivery of a public offering statement is required, or

unless exempt under G.S. 47C-4- 101(b), a unit owner shall furnish to a prospective purchaser before conveyance a statement setting forth the monthly common expense assessment and any other fees payable by unit owners. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-110. Escrow of deposits.

(a) Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to G.S. 47C-4-102(c) shall be immediately deposited in a trust or escrow account in an insured bank or savings and loan association in North Carolina and shall remain in such account for such period of time as a purchaser is entitled to cancel pursuant to G.S. 47C-4-108 or cancellation by the purchaser thereunder whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the seller.

(b) Except as provided in G.S. 47C-4-108, nothing in subsection (a) is intended to preclude the parties to a contract from providing for the use of progress payments by the declarant during construction. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-111. Release of liens or encumbrances.

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to G.S. 47C-4-102(c), a seller shall, at or before conveying a unit, record or furnish to the purchaser, releases of all liens or encumbrances affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien or encumbrance as provided for liens or encumbrances on real estate in G.S. 44A-16(5) and (6) or insurance against the lien or encumbrance acceptable to the purchaser. This subsection does not apply to any real estate which a declarant has the right to withdraw.

(b) Before conveying real estate to the association the declarant shall have that real estate released from: (1) all liens or encumbrances the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens or encumbrances on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens or encumbrances in specified amounts. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-112. Reserved for future codification purposes.

§ 47C-4-113. Express warranties of quality.

The law relating to express warranties is applicable to the sale of a condominium unit and supplements the provisions of this chapter; provided, however, that the existence of express warranties shall not constitute a disclaimer of implied warranties. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-114. Implied warranties of quality.

The law relating to implied warranties, including but not limited to, implied warranties that the premises are free from defective materials, constructed in a workmanlike manner,

constructed according to sound engineering and construction standards and that the premises may be used for a particular purpose, is applicable to the sale of a condominium unit and supplements the provisions of this chapter. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-115. Exclusion of modification of implied warranties of quality.

(a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(1) May be excluded or modified by agreement of the parties; and

(2) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any person in the business of selling real estate for his own account may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-116. Statute of limitations for warranties.

(a) A judicial proceeding for breach of any obligation arising under G.S. 47C-4-113 or 47C-4-114 must be commenced within the applicable period of limitations set out in Chapter 1 of the North Carolina General Statutes.

(b) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-117. Effect of violations on rights of action; attorney's fees.

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief. The court may award reasonable attorney's fees to the prevailing party. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-118. Labeling of promotional material.

If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT". (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-119. Declarant's obligation to complete.

(a) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to G.S. 47C-2-109.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by G.S. 47C-2-110, 47C-2-111, 47C-2-112, 47C-2-113, 47C-2-115, and 47C-2-116. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

§ 47C-4-120. Substantial completion of units.

In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an architect licensed under the provisions of Chapter 83 [83A] of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes, or by issuance of a certificate of occupancy authorized by law. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

Attachment #4

§ 47C-3-116. Lien for assessments.

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. If the unit owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200),

not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47C-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of

lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, s. 16; 2006-226, s. 14(a); 2009-515, s. 2.)

Attachment #4

Chapter 47F.

North Carolina Planned Community Act.

Article 1.

General Provisions.

§ 47F-1-101. Short title.

This Chapter shall be known and may be cited as the North Carolina Planned Community Act. (1998-199, s. 1.)

§ 47F-1-102. Applicability.

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the

association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State. (1998-199, s. 1; 2002-112, s. 2; 2004-109, s. 3; 2005-214, s. 1; 2005-422, s. 9; 2006-226, s. 15(a).)

§ 47F-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Chapter:

(1) Reserved.

(2) "Allocated interests" means the common expense liability and votes in the association allocated to each lot.

(3) "Association" or "owners' association" means the association organized as allowed under North Carolina law, including G.S. 47F-3-101.

(4) "Common elements" means any real estate within a planned community owned or leased by the association, other than a lot.

(5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each lot as permitted by this Chapter, the declaration or otherwise by law.

(7) "Condominium" means real estate, as defined and created under Chapter 47C [of the General Statutes].

(8) "Cooperative" means real estate owned by a corporation, trust, trustee, partnership, or unincorporated association, where the governing instruments of that organization provide that each of the organization's members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.

(9) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of the person's or group's interest in a lot not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

(10) "Declaration" means any instruments, however denominated, that create a planned community and any amendments to those instruments.

(11), (12) Reserved.

(13) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(14), (15) Reserved.

(16) "Leasehold planned community" means a planned community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.

(17) "Lessee" means the party entitled to present possession of a leased lot whether lessee, sublessee, or assignee.

(18) "Limited common element" means a portion of the common elements

allocated by the declaration or by operation of law for the exclusive use of one or more but fewer than all of the lots.

(19) "Lot" means a physical portion of the planned community designated for separate ownership or occupancy by a lot owner.

(20) "Lot owner" means a declarant or other person who owns a lot, or a lessee of a lot in a leasehold planned community whose lease expires simultaneously with any lease the expiration or termination of which will remove the lot from the planned community, but does not include a person having an interest in a lot solely as security for an obligation.

(21) "Master association" means an organization described in G.S. 47F-2-120, whether or not it is also an association described in G.S. 47F-3-101.

(22) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(23) "Planned community" means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. "Ownership of a lot" does not include holding a leasehold interest of less that [than] 20 years in a lot, including renewal options.

(24) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

(25) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(26) "Reasonable attorneys' fees" means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

(27) Reserved.

(28) "Special declarant rights" means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned

community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control.

(29) Reserved. (1998-199, s. 1.)

§ 47F-1-104. Variation.

(a) Except as specifically provided in specific sections of this Chapter, the provisions of this Chapter may not be varied by the declaration or bylaws.

(b) The provisions of this Chapter may not be varied by agreement; however, after breach of a provision of this Chapter, rights created hereunder may be knowingly waived in writing.

(c) Notwithstanding any of the provisions of this Chapter, a declarant may not act under a power of attorney or proxy or use any other device to evade the limitations or prohibitions of this Chapter, the declaration, or the bylaws. (1998-199, s. 1.)

§ 47F-1-105. Reserved for future codification purposes.

§ 47F-1-106. Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, or building code or other real estate use law, ordinance, or regulation may not prohibit a planned community or impose any requirement upon a planned community which it would not impose upon a substantially similar development under a different form of ownership or administration. Otherwise, no provision of this Chapter invalidates or modifies any provision of any zoning, subdivision, or building code or any other real estate use law, ordinance, or regulation. No local ordinance or regulation may require the recordation of a declaration prior to the date required by this Chapter. (1998-199, s. 1.)

§ 47F-1-107. Eminent domain.

(a) If a lot is acquired by eminent domain, or if part of a lot is acquired by eminent domain leaving the lot owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the lot owner for his lot and its interest in the common element. Upon acquisition, unless the decree otherwise provides, the lot's allocated interests are automatically reallocated to the remaining lots in proportion to the respective allocated interests of those lots before the taking, exclusive of the lot taken.

(b) Except as provided in subsection (a) of this section, if part of a lot is acquired by eminent domain, the award shall compensate the lot owner for the reduction in value of the lot. Upon acquisition, unless the decree otherwise provides, (i) that lot's allocated interests are reduced in proportion to the reduction in the size of the lot, or on any other basis specified in the declaration, and (ii) the portion of the allocated interests divested from the partially acquired lot are automatically reallocated to that lot and the remaining lots in proportion to the respective allocated interests of those lots before the taking, with the partially acquired lot participating in the reallocation on the basis of its reduced allocated interests.

(c) If there is any reallocation under subsection (a) or (b) of this section, the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a lot remaining after part of a lot is taken under this subsection is

thereafter a common element.

(d) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be apportioned among the owners of the lots to which that limited common element was allocated at the time of acquisition based on their allocated interest in the common elements before the taking.

(e) The court decree shall be recorded in every county in which any portion of the planned community is located. (1998-199, s. 1.)

§ 47F-1-108. Supplemental general principles of law applicable.

The principles of law and equity as well as other North Carolina statutes (including the provisions of the North Carolina Nonprofit Corporation Act) supplement the provisions of this Chapter, except to the extent inconsistent with this Chapter. When these principles or statutes are inconsistent or conflict with this Chapter, the provisions of this Chapter will control. (1998-199, s. 1.)

§ 47F-1-109. Reserved for future codification purposes.

Article 2.

Creation, Alteration, and Termination of Planned Communities.

§ 47F-2-101. Creation of the planned community.

A declaration creating a planned community shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the planned community is located, and shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the declaration. (1998-199, s. 1.)

§ 47F-2-102. Reserved for future codification purposes.

§ 47F-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47F-3-102(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Chapter.

(d) Title to a lot and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this Chapter. Whether a substantial failure to comply with this Chapter impairs marketability shall be determined by the law of this State relating to marketability. (1998-199, s. 1.)

§§ 47F-2-104 through 47F-2-116. Reserved for future codification purposes.

§ 47F-2-117. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain lot owners under G.S. 47F-2-118(b), the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation. An amendment shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the amendment.

(d) Reserved.

(e) Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41.

(1998-199, s. 1.)

§ 47F-2-118. Termination of planned community.

(a) Except in the case of taking of all the lots by eminent domain (G.S. 47F-1-107), a planned community may be terminated only by agreement of lot owners of lots to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the lots in the planned community are restricted exclusively to nonresidential uses.

(b) An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of lot owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every county in which a portion of the planned community is situated and is effective only upon recordation.

(c) A termination agreement may provide for sale of the common elements, but may not require that the lots be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the lot owners consent to the sale. If, pursuant to the agreement, any real estate in the planned community is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(d) The association, on behalf of the lot owners, may contract for the sale of real estate in the planned community, but the contract is not binding until approved pursuant to subsections (a) and (b) of this section. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to lot owners and lienholders as their interests may appear, as provided in the termination agreement.

(e) If the real estate constituting the planned community is not to be sold following

termination, title to the common elements vests in the lot owners upon termination as tenants in common in proportion to their respective interests as provided in the termination agreement.

(f) Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for lot owners and holders of liens on the lots as their interests may appear. All other creditors of the association are to be treated as if they had perfected liens on the common elements immediately before termination.

(g) If the termination agreement does not provide for the distribution of sales proceeds pursuant to subsection (d) of this section or the vesting of title pursuant to subsection (e) of this section, sales proceeds shall be distributed and title shall vest in accordance with each lot owner's allocated share of common expense liability.

(h) Except as provided in subsection (i) of this section, foreclosure or enforcement of a lien or encumbrance against the common elements does not of itself terminate the planned community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common elements other than withdrawable real estate does not withdraw that portion from the planned community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the planned community.

(i) If a lien or encumbrance against a portion of the real estate comprising the planned community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the planned community. (1998-199, s. 1.)

§ 47F-2-119. Reserved for future codification purposes.

§ 47F-2-120. Master associations.

If the declaration for a planned community provides that any of the powers described in G.S. 47F-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of one or more other planned communities or for the benefit of the lot owners of one or more other planned communities, all provisions of this act applicable to lot owners' associations apply to any such corporation. (1998-199, s. 1.)

§ 47F-2-121. Merger or consolidation of planned communities.

(a) Any two or more planned communities, by agreement of the lot owners as provided in subsection (b) of this section, may be merged or consolidated into a single planned community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of two or more planned communities to merge or consolidate pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting planned

communities following approval by owners of lots to which are allocated the percentage of votes in each planned community required to terminate that planned community. Any such agreement shall be recorded in every county in which a portion of the planned community is located and is not effective until recorded.

(c) Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the lots of the resultant planned community either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall common expense liabilities and votes in the new association which are allocated to all of the lots comprising each of the preexisting planned communities, and providing that the portion of the percentages allocated to each lot formerly comprising a part of the preexisting planned community shall be equal to the percentages of common expense liabilities and votes in the association allocated to that lot by the declaration of the preexisting planned community. (1998-199, s. 1.)

Article 3.

Management of Planned Community.

§ 47F-3-101. Organization of owners' association.

A lot owners' association shall be incorporated no later than the date the first lot in the planned community is conveyed. The membership of the association at all times shall consist exclusively of all the lot owners or, following termination of the planned community, of all persons entitled to distributions of proceeds under G.S. 47F-2-118. Every association created after the effective date of this Chapter shall be organized as a nonprofit corporation. (1998-199, s. 1.)

§ 47F-3-102. Powers of owners' association.

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

(1) Adopt and amend bylaws and rules and regulations;
(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;
(3) Hire and discharge managing agents and other employees, agents, and independent contractors;
(4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;
(5) Make contracts and incur liabilities;
(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
(7) Cause additional improvements to be made as a part of the common elements;
(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;
(9) Grant easements, leases, licenses, and concessions through or over the common elements;
(10) Impose and receive any payments, fees, or charges for the use, rental, or

operation of the common elements other than the limited common elements and for services provided to lot owners;

(11) Impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars ($20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

(12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;

(13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;

(14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;

(15) Assign its right to future income, including the right to receive common expense assessments;

(16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association. (1998-199, s. 1; 2004-109, s. 4; 2005-422, s. 1.)

§ 47F-3-103. Executive board members and officers.

(a) Except as provided in the declaration, in the bylaws, in subsection (b) of this section, or in other provisions of this Chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board shall discharge their duties in good faith. Officers shall act according to the standards for officers of a nonprofit corporation set forth in G.S. 55A-8-42, and members shall act according to the standards for directors of a nonprofit corporation set forth in G.S. 55A-8-30.

(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47F-3-103(e)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the planned community, the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60

days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board.

(d) The declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board.

(e) Not later than the termination of any period of declarant control, the lot owners shall elect an executive board of at least three members, at least a majority of whom shall be lot owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(f) The association shall publish the names and addresses of all officers and board members of the association within 30 days of their election. (1998-199, s. 1; 2005-422, ss. 2, 3.)

§ 47F-3-104. Transfer of special declarant rights.

Except for transfer of declarant rights pursuant to foreclosure, no special declarant right (G.S. 47F-1-103(28)) may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located. The instrument is not effective unless executed by the transferee. (1998-199, s. 1.)

§ 47F-3-105. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office, any contract or lease affecting or related to the planned community that is not bona fide or was unconscionable to the lot owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office upon not less than 90 days' notice to the other party. (1998-199, s. 1.)

§ 47F-3-106. Bylaws.

(a) The bylaws of the association shall provide for:
- (1) The number of members of the executive board and the titles of the officers of the association;
- (2) Election by the executive board of officers of the association;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
- (5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
- (6) The method of amending the bylaws.

(b) The bylaws may provide for any other matters the association deems necessary and

appropriate. (1998-199, s. 1.)

§ 47F-3-107. Upkeep of planned community; responsibility and assessments for damages.

(a) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when necessary to another lot owner access through the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.

(b) If a lot owner is legally responsible for damage inflicted on any common element, the association may direct such lot owner to repair such damage, or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.

(c) If damage is inflicted on any lot by an agent of the association in the scope of the agent's activities as such agent, the association is liable to repair such damage or to reimburse the lot owner for the cost of repairing such damages. The association shall also be liable for any losses to the lot owner.

(d) When the claim under subsection (b) or (c) of this section is less than or equal to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the executive board to determine if a lot owner is responsible for damages to any common element or the association is responsible for damages to any lot. If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each lot owner charged or against the association not in excess of the jurisdictional amount established for small claims by G.S. 7A-210. When the claim under subsection (b) or (c) of this section exceeds the jurisdictional amount established for small claims by G.S. 7A-210, liability of any lot owner charged or the association shall be determined as otherwise provided by law. Liabilities of lot owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under G.S. 47F-3-116. Liabilities of the association determined by adjudicatory hearing or as otherwise provided by law may be offset by the lot owner against sums owing to the association and if so offset, shall reduce the amount of any lien of the association against the lot at issue.

(e) The association shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the planned community. (1998-199, s. 1.)

§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.

Unless a specific procedure for the imposition of fines or suspension of planned community

privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body. (1997-456, s. 27; 1998-199, s. 1; 2005-422, s. 4.)

§ 47F-3-108. Meetings.

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. (1998-199, s. 1; 2004-109, s. 6; 2005-422, s. 5.)

§ 47F-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast ten percent (10%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present

throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

(c) In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. (1998-199, s. 1.)

§ 47F-3-110. Voting; proxies.

(a) If only one of the multiple owners of a lot is present at a meeting of the association, the owner who is present is entitled to cast all the votes allocated to that lot. If more than one of the multiple owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration or bylaws expressly provide otherwise. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

(b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy. A lot owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than lot owners of leased lots, (i) the provisions of subsections (a) and (b) of this section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

(d) No votes allocated to a lot owned by the association may be cast.

(e) The declaration may provide that on specified issues only a defined subgroup of lot owners may vote provided:

(1) The issue being voted is of special interest solely to the members of the subgroup; and

(2) All except de minimis cost that will be incurred based on the vote taken will be assessed solely against those lot owners entitled to vote.

(f) For purposes of subdivision (e)(1) above, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup. (1998-199, s. 1.)

§ 47F-3-111. Tort and contract liability.

(a) Neither the association nor any lot owner except the declarant is liable for that declarant's torts in connection with any part of the planned community which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association shall be brought against the association and not against a lot owner.

(c) Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A lot owner is not precluded from bringing an action contemplated by this section because the person is a lot owner or a member of the association. (1998-199, s. 1.)

§ 47F-3-112. Conveyance or encumbrance of common elements.

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, or any larger percentage the declaration specifies, agree in writing to that action; provided that all the owners of lots to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all the lots are restricted exclusively to nonresidential uses. Distribution of proceeds of the sale of a limited common element shall be as provided by agreement between the lot owners to which it is allocated and the association. Proceeds of the sale or financing of a common element (other than a limited common element) shall be an asset of the association.

(b) The association, on behalf of the lot owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsection (a) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any lot owner or the association in or to the common element conveyed or encumbered, including the power to execute deeds or other instruments.

(c) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section is void.

(d) No conveyance or encumbrance of common elements pursuant to this section may deprive any lot of its rights of access and support. (1998-199, s. 1.)

§ 47F-3-113. Insurance.

(a) Commencing not later than the time of the first conveyance of a lot to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If the insurance described in subsection (a) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all lot owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the lot owners.

(c) Insurance policies carried pursuant to subsection (a) of this section shall provide that:

(1) Each lot owner is an insured person under the policy to the extent of the lot owner's insurable interest;

(2) The insurer waives its right to subrogation under the policy against any lot owner or member of the lot owner's household;

(3) No act or omission by any lot owner, unless acting within the scope of the owner's authority on behalf of the association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a lot owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(d) Any loss covered by the property policy under subdivision (a)(1) of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for lot owners and lienholders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and lot owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

(e) An insurance policy issued to the association does not prevent a lot owner from obtaining insurance for the lot owner's own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any lot owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each lot owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(g) Any portion of the planned community for which insurance is required under subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the planned community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners assigned to the limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the planned community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, (ii) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the owners of the lots to which those limited common elements were allocated, or to lienholders,

as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the lots. Notwithstanding the provisions of this subsection, G.S. 47F-2-118 (termination of the planned community) governs the distribution of insurance proceeds if the planned community is terminated.

(h) The provisions of this section may be varied or waived in the case of a planned community all of whose lots are restricted to nonresidential use. (1998-199, s. 1.)

§ 47F-3-114. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses, the funding of a reasonable operating expense surplus, and any prepayment of reserves shall be paid to the lot owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. (1998-199, s. 1.)

§ 47F-3-115. Assessments for common expenses.

(a) Except as otherwise provided in the declaration, until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments thereafter shall be made at least annually.

(b) Except for assessments under subsections (c), (d), and (e) of this section, all common expenses shall be assessed against all the lots in accordance with the allocations set forth in the declaration. Any past-due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) per year. For planned communities created prior to January 1, 1999, interest may be charged on any past-due common expense assessment or installment only if the declaration provides for interest charges, and where the declaration does not otherwise specify the interest rate, the rate may not exceed eighteen percent (18%) per year.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the lots to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefitted; and

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association may be made only against the lots in the planned community at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the negligence or misconduct of any lot owner or occupant, the association may assess that expense exclusively against that lot owner or occupant's lot.

(f) If common expense liabilities are reallocated, common expense assessments and any

installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. (1998-199, s. 1.)

§ 47F-3-116. Lien for assessments.

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different,

to the mailing address for the lot owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. (1998-199, s. 1; 2005-422, s. 6.)

§ 47F-3-117. Reserved for future codification purposes.

§ 47F-3-118. Association records.

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

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the

request and is binding on the association, the executive board, and every lot owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board. (1998-199, s. 1; 2005-422, s. 7.)

§ 47F-3-119. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee under G.S. 47F-2-118 following termination or G.S. 47F-3-113 for insurance proceeds, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers, and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. (1998-199, s. 1.)

§ 47F-3-120. Declaration limits on attorneys' fees.

Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed in the declaration. (1998-199, s. 1.)

§ 47F-3-121. American and State flags and political sign displays.

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag;
3. United States flag; or
4. North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The

restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA".**

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term "political signs".

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS".**

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others. (2005-422, s. 8; 2006-226, s. 15(b).)

§ 47F-3-122. Irrigation of landscaping.

Notwithstanding any provision in any declaration of covenants, no requirement to irrigate landscaping shall be construed to:

(1) Require the irrigation of landscaping, during any period in which the U.S. Drought Monitor, as defined in G.S. 143-350, or the Secretary of Environment and Natural Resources has designated an area in which the association is located as an area of severe, extreme, or exceptional drought and the Governor,

a State agency, or unit of local government has imposed water conservation measures applicable to the area unless:

a. For declarations of covenants registered prior to October 1, 2008, the covenant specifically requires the irrigation of landscaping notwithstanding water conservation measures imposed by the Governor, a State agency, or unit of local government. The association may not fine or otherwise penalize an owner of land for violation of an irrigation requirement during a period of a drought as designated under this subdivision, unless the covenant specifically authorizes fines or other penalties.

b. For covenants registered on or after October 1, 2008, the covenant must specifically state that any requirement to irrigate landscaping is suspended to the extent the requirement would otherwise be prohibited during any period in which the Governor, a State agency, or unit of local government has imposed water conservation measures. The association may not fine or otherwise penalize an owner of land for violation of an irrigation requirement during a drought designated under this subdivision, unless the covenant authorizes the fines or other penalties. This authorization must be written on the first page of the covenant in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the declarations of covenants.

(2) For purposes of this section, the term "landscaping" includes lawns, trees, shrubbery, and other ornamental or decorative plants. (2008-143, s. 19(b).)

§ 47F-3-116. Lien for assessments.

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then

reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A

MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). (1998-199, s. 1; 2005-422, s. 6; 2009-515, s. 1.)

House Select Committee on Homeowners Associations Notice of Public Hearing

Representative Jennifer Weiss, Co-chairman

Representative William C. McGee, Co-chairman

The House Select Committee on Homeowners Associations will hold a public hearing on Tuesday, February 2, 2010, at 2:00 p.m. in Room 643, Legislative Office Building, 300 N. Salisbury St. Raleigh, NC . The public hearing agenda will provide opportunity for public comment on issues related to the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. *All persons who wish to be heard must reserve a place on the agenda by contacting Committee Assistants, Susan Doty at 715-3010 or weissla@ncleg.net or Jayne Nelson at 733-5747 or mcgeela@ncleg.net by 5:00 p.m. Monday, February 1, 2010.*

Written comments are encouraged, but not required. However, in order that their statement may be made a part of the record, speakers are encouraged to provide the Committee Assistants with a copy of their prepared remarks at the time of the hearing. Written statements should be on standard size (8 ½" x 11") paper with sufficient left margin for binding. Speakers are encouraged to bring additional copies of written remarks for the public and press.

Oral presentations will take place in the order determined by the Chair. Oral presentations will be strictly limited to no more than five (5) minutes and the Chair reserves the right to further reduce the time based on the number of speakers. Persons who wish to present additional information to the committee, and any person who cannot be scheduled or heard in the time provided, may submit a copy of their statement to each Committee Assistant prior to 5:00 p.m. Monday, February 1, 2010, for inclusion in the record.

Note: As many persons as possible will be scheduled and heard within the time reserved. Because of time limitations, it may not be possible to schedule all who request to speak. Should the hearing run ahead of schedule, additional persons will be heard as time permits. Speakers will not be permitted to exchange scheduled times or to transfer their time to another speaker.

Public parking is available in Parking Deck 75, 333 N. Salisbury Street.

Any person who desires additional information about this hearing should contact the Committee Assistants as indicated above.

AGENDA

Select House Committee on Homeowners Associations Public Hearing

February 2, 2010

I. Call to Order

II. Introduction from Representatives McGee and Weiss

III. Public Hearing Rules and Procedures

IV. Public Comment Period (see attached list)

V. Member Comment Period

VI. Closing Remarks by the Chairs

VII. Adjournment

THOSE WISHING TO SPEAK AT THE HOA COMMITTEE PUBLIC HEARING FEBRUARY 2, 2010

PAUL MENGERT

DIANA STARLING

HOPE DERBY CARMICHAEL

TIM SELLERS

JIM SLAUGHTER

HERBERT PEARTHREE

JANE B. JORDAN

ROBERT BAER

HENRY JONES

STACEY REDGRAVE

FRANK WIEDMAN

LOU DeVITA

KEN DOCKSER

BILL COLYER

PAT EASTERBROOK

JOHN McINERNEY

KEITH LONG

ALIX PORTO

MARIE GRAY

VIRGINIA CROSS

LIST OF SPEAKERS
HOA PUBLIC HEARING, FEB 2, 2010
PAGE 2

RANDY FANN

SPENCER FERGUSON

STEVE FELLMETH

JIM LAUMANN, HOA OF NC. 919-971-7134

JACK BIGGERSTAFF

JIM LAUMANN

MIKE STONESTREET

JOHN QUINN, MAYOR OF INDIAN TRIAL

ROYCE COLES

RICHARD MARSHALL

SUSAN BARNARD

LARRIE LOEHR

SAMUEL FRANCK

ELLIOT CORNET

JOHNNY CAMERON

LEISA EL-SAHBAZZ

PIERRE GIANI

LIST OF SPEAKERS
HOA PUBLIC HEARING, FEB 2, 2010
PAGE 3

GINA BROOKS

BRIAN VANLANDINGHAM

ROGER FISH

KELLY ST. CLAIR

GORDON CORLEW

WILLIAM HARGROVE

RON STEPHENS

House Select Committee on Homeowners Associations Public Hearing

February 2, 2010

2:00 pm

The House Select Committee on Homeowners Associations met on Tuesday February 2, 2010 at 2:00 pm in the Legislative Office Building in room 643 to hold a public hearing on issues concerning Homeowners Associations. The following members were present: Cochairman McGee (presiding), Cochairman Weiss, Representatives Howard, Earle, Cleveland, Heagarty and Wray. For visitors in attendance see the attached Visitor Attendance Sheet.

Cochairman McGee opened the hearing at 2:00 pm and had the members of the committee introduce themselves to the audience. He then recognized the staff and sergeant at arms and explained how the hearing would be conducted.

Before recognizing the public participants in attendance, Cochairman McGee moved to enter thirty-two letters from concerned citizens regarding Homeowners Association issues from across the State into the minutes without objection (see attachment 1).

Forty citizens representing Homeowners Associations members, Homeowners Association Management companies, Realtors, Legal Counsel for Homeowners Associations and Government Officials with experiences to share about Homeowners Associations were all allowed to speak. Each turned in their comments to be recorded in the minutes (see attachment 2).

After the scheduled participants finished, Cochairman McGee asked if anyone that was not scheduled to speak would like to add any comments.

Ms. Winifred Haywood from Winston-Salem was recognized. She added that Homeowners Associations need more checks and balances. In foreclosures, no repayment plans are offered and residents should be allowed to pay what they can afford. Ms. Haywood added that attorney's fees are often higher than the amount owed to the Homeowners Associations.

Mr. Roy Roebuck from Winston-Salem was recognized and he added that when he bought into a Homeowners Association he did not understand HOAs and that one should investigate first before calling an attorney to handle problems.

Cochairman Weiss told the members of the committee that the letters and comments from the day's hearing would be distributed to them after the hearing.

Cochairman McGee expressed his appreciation to all of those who came to participate in the hearing and said that the attendees had provided good information for the Committee and Staff and that their time was not wasted as he hoped to have good legislation pass out of the committee for the upcoming session.

Cochairman McGee again thanked everyone for coming and adjourned the hearing at 3:55 pm.

William C. McGee,
Cochairman

Jayne A. Nelson,
Committee Assistant

Jayne Nelson (Rep. McGee)

Comments

From: TXNTRAVLR@aol.com
Sent: Friday, January 29, 2010 12:50 PM
To: Weiss.Jennifer@ncleg.net; Rep. William C. McGee; Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Cc: Rep. Joe Hackney (Speaker)
Subject: Written Public Comment for the House Select Committee on Homeowner Associations
Attachments: Public Comments.wps

Please accept the following as my written comments for consideration by the Committee. Thank you very much for your consideration! I will also attach the file if you need to download for distribution.

January 29, 2010

Representative William McGee
And Representative Jennifer Weiss
300 North Salisbury Street
Raleigh, North Carolina 27603-5925

Dear Chairmen:

Thanks very much for giving me the opportunity to make public comments concerning the North Carolina Statutes that relate to Homeowner Associations and their impact upon citizens affected by Association governance. I personally own condominiums in Texas, Florida and now in North Carolina. I am glad to provide input and any other information that will help the Committee formulate changes that will benefit all of the residents subject to Homeowner's Association management.

About two years ago I began to look closely at the operations and management of our condo group in North Carolina. [redacted] never I questioned decisions made by our Board, I was simply told "that's the way it is!" Since I was familiar with [redacted]ominium law in the state of Florida, I tried to call the Attorney General's office here in North Carolina to seek possible remedies. I WAS TOLD POINT BLANK THAT MY ONLY REMEDY WAS THROUGH THE COURTS!!

In the past two years I have witnessed our Board of Directors participating in the following activities:

1) Refusing to allow access to financial records even when requested in writing on at least 3 occasions. This is a blatant violation of NC State Statutes and our condo Bylaws.
2) Establishing a Nominating Committee for the purpose of selecting Board nominees, even when there is no mention of such a Committee in the By Laws. The Committee actually refused to put a qualified member's name on the ballot. The same Board has also manipulated member's terms of office to perpetuate their rule. Both of these actions are in direct conflict with NC State Statutes!
3) Refusing to allow Owner access to bids and contracts for work performed on Common area facilities, even when requested in writing. This is because contracts for maintenance work are not required to be in writing by the Board. Over the past three years only one Vendor has been responsible for painting, roofing, and other maintenance projects. Once again the Board is participating in bad business practices and violating State Statutes.
4) Allowing Homeowners to build additions to their property without requiring that the Vendor obtain proper County Permits and Inspections. This violates State, local regulations and our By-laws!
5) Ignoring requests to repair Common Area foundation problems for over 2 years and at the same time spend Association funds to paint the very building that has warped and uneven floors caused by the faulty foundation.
6) Refusing to pursue an insurance claim to repair damage to an individual unit that was caused by a Common Area leak. The Homeowner was told by the Board that their only recourse was through their individual insurance company. The Owner refused to accept this decision and the claim was indeed paid by the Homeowner's Association Insurance Policy. We can only assume that the Board didn't want to pay the deductible.
7) Discriminating against Homeowners by collecting funds for snow removal from all Owners and then only scraping driveways for approximately half of the condo units. This violates the non-discrimination policy in our By-laws.
8) Allowing an individual who is not a Homeowner according to tax records to sit on the Board and to make financial decisions. [redacted] is another violating of our By-laws and possibly State statutes.
[redacted]iving a contractor the key to an individual unit under the guise of emergency repairs. Only the exterior of the building was actually being painted, yet the Board gave the painter a key for his convenience. The Homeowner was NEVER notified by the Board that access was permitted.
10) Refusing to provide financial statements, balance sheets, expense statements and Board minutes on a regular basis. This

violates both our By-laws and State statutes.

These are but a few of the instances that are happening at my condo complex. I'm sure that other Homeowners across the state are experiencing the same sort of inept, improper and sometimes illegal Association actions. Ours is a small complex that does not have sufficient budget to allow an outside management company. Hence we are bound by the whims of five Board members who do not feel that they can be held liable for any bad decisions or deliberate activities. Our Bylaws do state that Board members can be held liable for willful acts of negligence , but the only venue available to Homeowners in North Carolina is an already overburdened court system. Having to pay an attorney to read both State regulations and particular Association By-laws can make a lawsuit prohibitively expensive for the individual Homeowner. In the event that a Homeowner could bring a suit, Board members will no doubt want to spend Association funds to cover the cost of their defense. Unless a judge ordered the Board member to pay all legal costs, an Owner would likely be paying both for the prosecution and the defense through Association dues.

I feel very strongly that Board members have the same fiduciary relationship with their Owners as do banks, real estate firms, brokerage houses and insurance companies. Homeowner Associations collect money from individual owners and expend that money supposedly in the Owner's best interest. As long as a Board does a proper job of handling our funds, I am very pleased with the operations of Homeowner Associations. It is only when a Board exceeds their authority, or puts their personal agenda ahead of those they were elected to serve, that I have a problem.

While the state of North Carolina does have limited statutes in place, the regulations only apply to condominiums developed after 1986 and the existing statutes DO NOT clearly define the penalties for non-compliance. Our statutes also DO NOT indicate a state agency responsible for enforcing regulations or a mechanism by which an individual Homeowner can proceed against a non-compliant Board of Directors. In these circumstances, the burden of responsibility lies with the Homeowner, not the Board when it comes to compliance with statutes and by-laws. Without clear cut penalties and a designated agency responsible for enforcement of the laws, Boards will continue to operate with a relatively freehand.

Many condominium associations, particularly smaller associations formed prior to 1986, are organized as non-profit associations. They are not subject to the same laws as for profit or non-profit corporations especially as related to reporting requirements and responsibilities to Association members. Perhaps the Committee should consider including all Homeowner associations under the same regulatory umbrella for both business practices and reporting requirements.

In summary, I would suggest that the Committee consider:

1) Selecting an agency with the existing framework of State government that has the power to investigate and resolve violations of North Carolina statutes and individual condominium by-laws.
2) Authorize the selected agency to define specific penalties for Board members/ Associations that are not in compliance with either State laws or written By-laws.
3)Making all associations subject to the same business regulations and penalties that apply to non-profit corporations in the State of North Carolina regardless of when the condominium was developed.
4) Reviewing the regulations that I submitted from the State of Florida, particularly with regards to establishing a regulatory authority such as the Ombudsman's office to help mediate and solve condominium issues.

Thanks again for the Committee's time and efforts. I apologize if I have misinterpreted any of the regulations. I did my best to read and understand them as a layman with no legal background. I hope that we can work together to protect the rights of Owners throughout the State.

Sincerely yours,

Jack F. Biggerstaff, Jr.
9 Cedarbrook Drive
Hendersonville, North Carolina 28739

828-697-5001
Biggerstaf@aol.com

Jayne Nelson (Rep. McGee)

Rec'd

From: ncstophoaabuse@aol.com
Sent: Monday, February 01, 2010 5:11 PM
To: Rep. William C. McGee
Cc: Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray
Subject: Homeowner Association information

Representative McGee,

My husband and I are encouraged to know that you are interested in reigning in the power of homeowner's associations in North Carolina. We know from personal experience how difficult it is to fight against these private goverments and their lobbyist friends at the Community Association Institute (CAI).

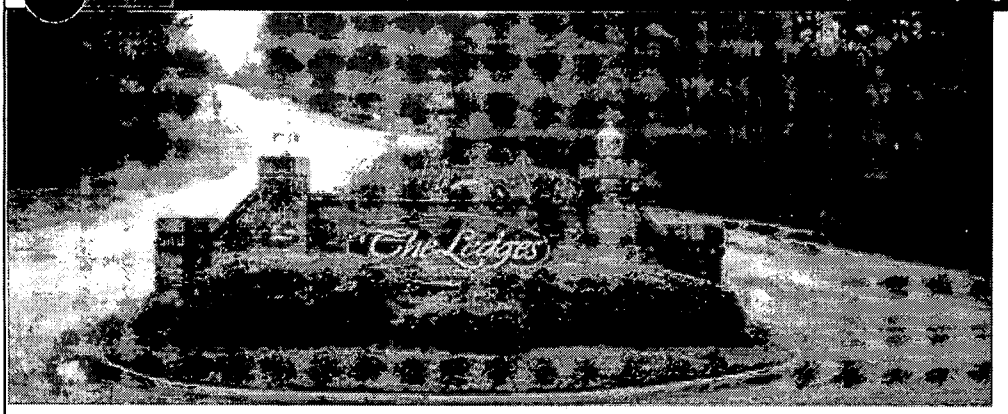
In 2001 we purchased our retirement dream home in Hendersonville, North Carolina. We intentionally chose a community without amenities or private streets. In 2003 our HOA amended the Restrictive Covenants granting the officers the authority to, among other things, convert existing private property to common area, acquire additional property, adopt Rules and Regulations, impose fines and mandatory assessments and impose liens on our homes. To defend ourselves we filed a lawsuit which was ultimately decided in our favor by the North Carolina Supreme Court. (Armstrong v. Ledges Homeowner's Association, filed Augusut 18, 2006, No. 640PA05) To preserve our retirement savings, my husband went to work at Walmart to earn the equivalent of our legal fees. The toll on our well-being during the three years of litigation is incalculable. We've chronicled our experience on a website and invite you to visit www.ledgesofhiddenhills.com.

Anything you can do to protect our property rights will be remembered and appreciated.

Robert and Vivian Armstrong
510 Red Fox Court
Hendersonville, N.C. 28792

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges of Hidden Hills

"Property does not have rights, only people do.."

Supreme Court Justice Potter Stewart

Broadly stated, this web site is intended to create historical context within which to explore the events that resulted in the filing of a lawsuit in which every property owner was obliged to be a party. It will document an assault on the most fundamental right from which all other liberties flow - the right to property - by a so-called "private government."

What occurred in the Ledges subdivision, while clearly distinguishable, is strikingly similar to the taking of private property by eminent domain. In this instance, the homeowners association amended the Covenants converting private property to common area and granted their agents total discretion to impose unlimited mandatory assessments with the authority to file a lien on our homes.

This analysis will present evidence, classify it, consider motives and test reality. The resulting process will be organized in such a way as to be either a "quick study" or digested as a documented expose by viewing the documents behind the highlighted links.

Questions about this site? Please send email to NCStopHOAAbuse@aol.com.

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges
of Hidden Hills

"Morality cannot be legislated, but behavior can be regulated.
Judicial decrees may not change the heart, but they can restrain the heartless."

Dr. Martin Luther King

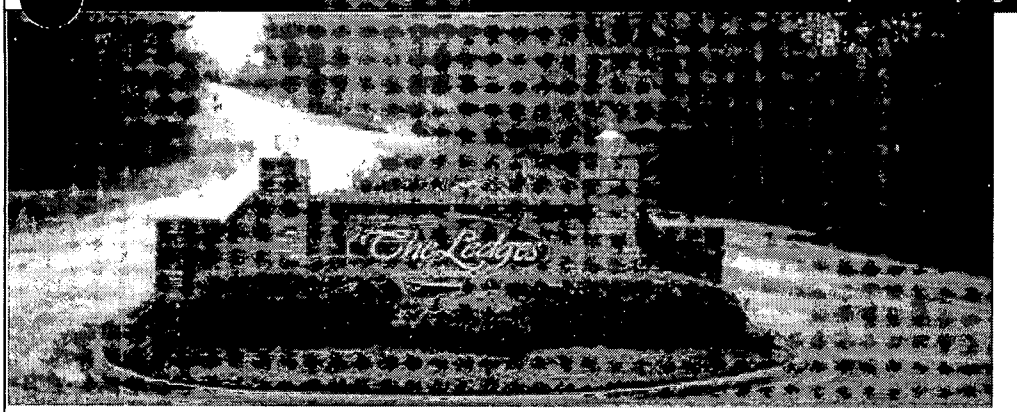
In 1988, Vogel Development Corporation filed a plat creating the Ledges of Hidden Hills, a 49-lot subdivision in Henderson County, North Carolina. A Declaration of Restrictive Covenants was filed concurrently as required by the County Development Ordinance. No amenities or common areas are shown on the plat or referred to in the Covenants. The plat provides a 50 foot right-of-way to the state Department of Transportation for street maintenance. Neither the plat nor the Covenants mention assessments or a requirement to be a member of a homeowners association.

Originally formed as a social club, the Ledges Homeowners Association incorporated itself in 1994 as a non-profit in order to obtain a taxpayer identification number, a requirement for opening a checking account. Nine years later on July 16, 2003, the corporation amended its By-Laws transforming itself into a so-called "private government" by adopting the North Carolina Planned Community Act and granting its officers the authority to, among other things, convert existing private property to common area, acquire additional property, adopt and amend Rules and Regulations, impose fines of $150./day for rule infractions, establish mandatory assessments and place liens on our homes.

With stunning arrogance, the association Board of Directors ignored the written opinion of their own lawyers, Dungan and Mitchell using the By-Laws in a manner they had been advised was not legally appropriate.

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges of Hidden Hills

"Ultimately, the only power to which man should aspire is

that which he exercises over himself."

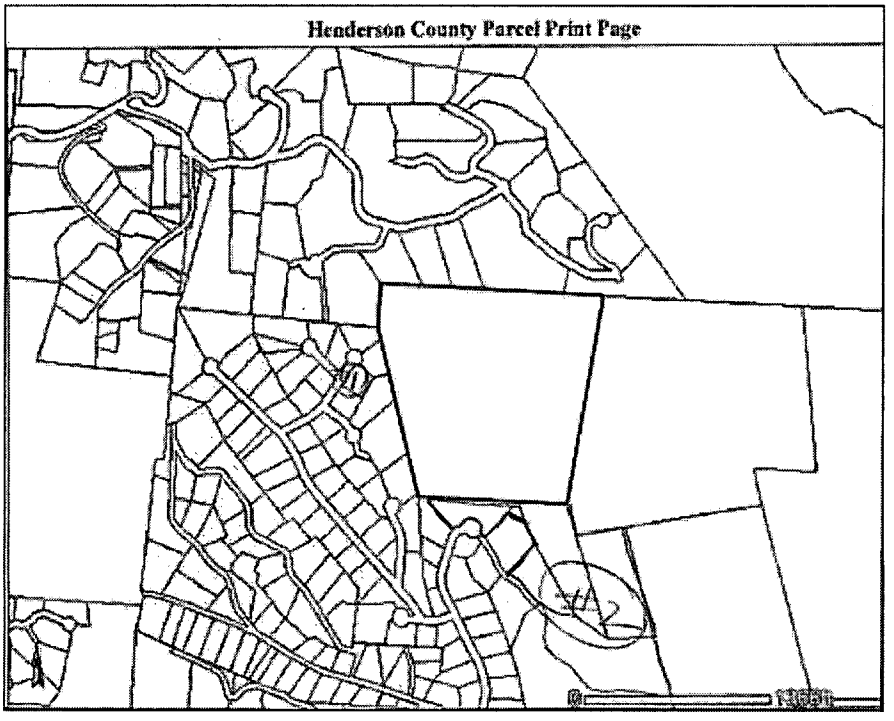
Elie Wiesel

Many of us wondered why such Draconian changes were being imposed on our neighborhood. Houses had been built on all but a few of the lots and property values were increasing. Without exception, owners took pride in and maintained their homes and abided by the Covenants. Why, then, did the newly-installed association president with cooperation from the original developer believe it necessary to subject the Ledges of Hidden Hills to the statutory parameters of the North Carolina Planned Community Act?

The reasons given speak volumes but aren't expositive. For example, behavior considered serious enough to warrant the imposition of a $150.00/day fine included walking two leashed dogs simultaneously, failing to answer the door or telephone when a Neighborhood Watch captain visits or calls and having an attitude of "hooray for me and----you." (August 4, 2003 e-mail from homeowners association president)

It is disconcerting when a few so covet power they are willing to threaten their neighbor's homes. Yet this does not explain the stated intention to add property to the subdivision and the provision that Board of Directors may, at their discretion, convene meetings outside the state of North Carolina.

Sometimes A Picture Is Worth A Thousand Words!



For the purpose of exploring motives, relevant observations are useful:

1. The approximately 50-acre undeveloped parcel at the center (Garren property) was zoned R-20 shortly before the association Board retained Dungan and Mitchell to "make suggestions" concerning changes to the subdivision documents.

2. The Garren property is land-locked meaning it cannot be accessed by existing right-of-way even though it adjoins three subdivisions; the Ledges of Hidden Hills, Hidden Hills and Cove Creek Estates.

3. Attorney Robert Dungan represents the Cove Creek Estates homeowners association Board and advised them to adopt the Planned Community Act giving assurances that, in return for access through their subdivision, the Board could dictate development plans to the purchaser of the Garren property.

4. The North Carolina Planned Community Act provides for the formation of "master associations" created when the homeowners associations of adjoining planned communities merge.

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges of Hidden Hills

"The human heart is an idol factory."

Martin Luther

At the nexus of the most interested parties are the association president (#1 on the parcel map), the developer of the Ledges and Hidden Hills (#2 on the parcel map) and attorney Ted Mitchell, a relative of the association Board member who recommended retaining him.

#1. The association president includes in his credentials a three-year term on the Fallsmead Homes Corporation Board of Directors. Located in the Washington, D.C. suburb of Rockville, Maryland, this 291-home neighborhood surrounding a large private park has an active homeowners association which provides centralized planning in the form of *"financial, organizational, social, and civic direction"* to the community.

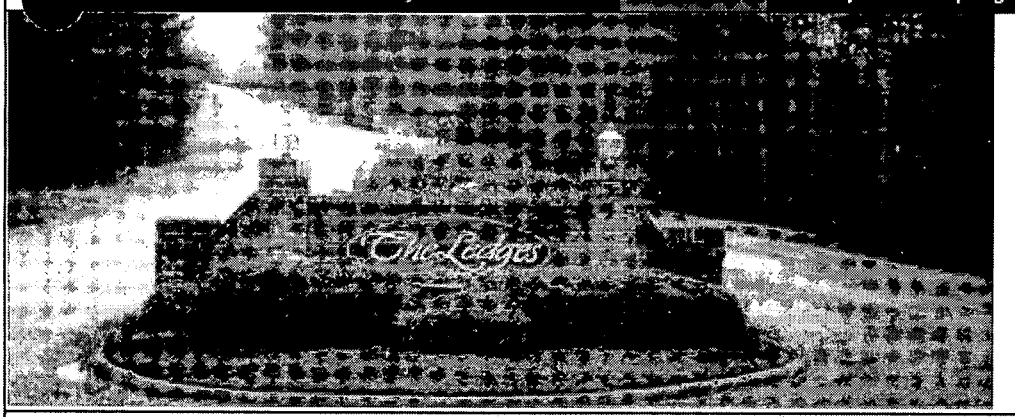
#2. Retired developer, Ed Vogel lives in a self-described multi-million dollar home on 50+ acres in the Hidden Hills subdivision. In the Hidden Hills Restrictive Covenants, Mr. Vogel expressly excluded his own property from the restrictions and has stated his intention to form a homeowners association for Hidden Hills.

In his July 19, 2002 letter to the Ledges Homeowners Association Board, attorney Ted Mitchell states, *"Furthermore, if the Act is adopted, an association can seek payment of its reasonable attorneys' fees.....in all actions to enforce the provisions of the articles of incorporation, the declaration, bylaws and rules and regulations."* With shameless self-interest, he then suggests that the Board of Directors submit the Ledges subdivision to the North Carolina Planned Community Act. However, in subsequent

legal briefs filed in response to the lawsuit, Mr. Mitchell refused to defend his implied assertion that the subdivision was a "planned community" as defined by the statute. In fact, during oral arguments Robert Dungan conceded that ***the Ledges is not a planned community.***

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges
of Hidden Hills

"Those who cannot learn from history are doomed to repeat it."

George Santayana

Question: When is a lawsuit not a lawsuit?

Answer: When the facts are not in dispute.

e nature of our final resort to the courts in defense of our homes has been misrepresented as "suing our neighbors personally". The reality is much different. Three couples filed a Declaratory Judgment on October 17, 2003. By definition, a Declaratory Judgment is one which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. (Black's Law Dictionary)

As a matter of law it was necessary that all property owners of record be included as parties to the lawsuit simply because the rights of every owner will be impacted by the North Carolina Supreme Court's decision.

No law or legal precedent exists authorizing the action taken by the Ledges homeowners association. Lawyers on both sides as well as the Justices of the North Carolina Supreme Court agree that the issues are "a case of first impression."

Question: When is a democracy not a democracy?

Answer: According to Thomas Jefferson, "A democracy is nothing more than mob rule, where fifty-one percent of the people may take away the rights of the other forty-nine."

It's been argued that, because a majority wanted to make wholesale changes to the governing documents changing the nature of community, those in the minority were obligated to dutifully submit. This line of thinking reveals a lack of understanding concerning the basic elements necessary for the existence of a legitimate democracy; respect for the rule of law, constitutional protections for the minority, a free press and access to the means of dissent – none of which exist in either form or substance in

the Ledges "private government." Instead, those in power have demonstrated contempt for the law, used intimidation, ad hominem attacks and misinformation to suppress dissent and enforce a "Group Think" mentality.

Question: When is the Golden Rule not the Golden Rule?

Answer: When the meaning is perverted to, "him with the gold, makes the rules."

Perfectly capturing the essence of the contemporary culture's "What's in it for me?" Gospel, George Bernard Shaw observed, "A government that robs Peter to pay Paul can always depend on the support of Paul."

Question: When, in certain circles, is it considered necessary to blame and belittle the messenger?

Answer: When the message threatens an agenda.

"Resort is had to ridicule only when reason is against us." Thomas Jefferson



The Ledges of Hidden Hills

North Carolina Supreme Court Decision

To Download a copy of this decision click here

All opinions are subject to modification and technical correction prior to official publication in the North Carolina Reports and North Carolina Court of Appeals Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the North Carolina Reports and North Carolina Court of Appeals Reports, the latest print version is to be considered authoritative.

IN THE SUPREME COURT OF NORTH CAROLINA
No. 640PA05
FILED: 18 AUGUST 2006

ROBERT LOUIS ARMSTRONG and wife, VIVIAN B. ARMSTRONG; L.A. MOORE and wife, E. ANN MOORE; and WILLIAM B. CLORE and wife, RAE H. CLORE,

Petitioners

v.

THE LEDGES HOMEOWNERS ASSOCIATION, INC. and THE OWNERS OF LOTS IN THE LEDGES OF HIDDEN HILLS SUBDIVISION: VIOLET M. MYERS, C. DONALD LARSSON/TRUSTEE, MARILYN BARNWELL, CHARLES S. and CATHRYN A. HARRELL, THOMAS REIN LUGUS, JACK H. and ROBERTA M. CRABTREE, DOROTHY LOIS SHIMON, TRUST, WILLIAM V. and JOANN K. PHILLIPS, RICHARD and ELIZABETH C. COOMBES, GUIDO D. and EILEEN J. MIGIANO, EUGENE M. and LUCRETIA B. WAGNER, JACQUELINE W. EADIE, ELIZABETH H. SCHAD, TRUST, SUNNIE TAYLOR, SUE EDELL and T. HILLIARD STATON, ALBERT W. and URSULA K. JENRETTE, THERESA M. WUTTKE, JOHN FITZGERALD and ROBIN RENEE HOLSHUE, ADRIAN R. and MARILYN B. ADES, LINDA N. ROSS, J.D. and EDWINA S. MILLER, RUSSELL L. and LAUNA L. SHOEMAKER, PAUL E. and DEBORAH H. PARKER, WILLIAM SCOTT and ELIZABETH A. CHOVAN, DAVID N. and MELANIE D. HUTTO, TEDD M. and JEANNIE PEARCE, JIMMIE J. and BETTY J. REMLEY, TERRY N. and MICHELLE L. MCADOO, JOSEPH A. and MARGARET K. DINKINS, CARLTON W. and FRANCES A. DENCE, CLIFTON F. and DONNA GRUBBS SAPP, MARVIN G. and E. JOYCE KATZ, JOY N. PARISIEN, LEWIS EDWIN and HELEN BOOKMAN, and DENNIS R. and DONDRA C. SETSER,

Respondents

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 620 S.E.2d 294 (2005), affirming a judgment granting summary judgment for respondents and denying petitioners' requests for injunctive relief signed on 20 October 2004 by Judge J. Marlene Hyatt in Superior Court, Henderson County. Heard in the

Supreme Court 20 April 2006.

Kennedy Covington Lobdell & Hickman, by Roy H. Michaux, Jr., for petitioner-appellants Robert and Vivian Armstrong.

Gray, Layton, Kersh, Solomon, Sigmon, Furr & Smith, P.A., by Ted F. Mitchell, for respondent-appellee The Ledges Homeowners Association, Inc., and Dungan & Associates, P.A., by Robert E. Dungan, for respondent- appellees Owners of Lots in The Ledges of Hidden Hills.

Jordan Price Wall Gray Jones & Carlton, PLLC, by Henry W. Jones, Jr., Hope Derby Carmichael, and Brian S. Edlin, and Wyrick Robbins Yates & Ponton, LLP, by Roger W. Knight, Counsel for Research Triangle Chapter of the Community Associations Institute, Inc., amicus curiae.

WAINWRIGHT, Justice.

This is a declaratory judgment action brought by subdivision property owners against their homeowners' association. The dispositive question before the Court is to what extent the homeowners' association may amend a declaration of restrictive covenants. The parties agree that a declaration may be amended and that the subdivision in question is not subject to North Carolina's Planned Community Act, which is codified in Chapter 47F of the North Carolina General Statutes. There are no disputed questions of fact.

We hold that amendments to a declaration of restrictive covenants must be reasonable. Reasonableness may be ascertained from the language of the declaration, deeds, and plats, together with other objective circumstances surrounding the parties' bargain, including the nature and character of the community. Because we determine that the amendment to the declaration *sub judice*, which authorizes broad assessments "for the general purposes of promoting the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board," is unreasonable, we conclude that the amendment is invalid and unenforceable.Petitioners own lots in The Ledges of Hidden Hills subdivision (the Ledges) in Henderson County. The Ledges was developed in 1988 by Vogel Development Corporation (Vogel) pursuant to a plat recorded in the Henderson County Public Registry. Forty-nine lots are set out along two main roads that form a Y shape. There are four *cul de sacs*. The plat designates the roads as "public roads," which are maintained by the State, and shows no common areas or amenities.

Before selling any lots, Vogel recorded a Declaration of Limitations, Restrictions and Uses (Declaration). The Declaration contained thirty-six provisions which restricted the lots to single family residential use; established setbacks, side building lines, minimum square footage, and architectural controls; and otherwise ensured a sanitary and aesthetically pleasing neighborhood. The Declaration emphasized that roads in the Ledges are "dedicated to public use . . . forever" and that Vogel may "dedicate the roads . . . to the North Carolina Department of Transportation." Finally, the Declaration provided for the establishment of a homeowners' association:

The Developer [Vogel] intends to establish a non-profit corporation known as THE LEDGES OF THE HIDDEN HILLS HOMEOWNERS [sic] ASSOCIATION, and said Homeowner's [sic] Association, upon the recording of its Articles of Incorporation in the office of the Register of Deeds for Henderson County, North Carolina, shall have the right, together with the lot owners of lots within this Subdivision, either acting individually or as a group, to administer and enforce the provisions of this Declaration of Restrictive Covenants as thesame now exists or may hereafter from time to time be amended.

(Emphasis added.) The Declaration did not contain any provision for the collection of dues or assessments, and it appears that formation of a homeowners' association was primarily intended to relieve Vogel from the ongoing responsibility to enforce the architectural control covenants.

Vogel began conveying lots in the Ledges after recording the Declaration and plat. Later, Vogel decided to construct a lighted sign on private property in the Sunlight Ridge Drive right of way. Sunlight Ridge Drive is the entry road to the Ledges. Because lighting the sign required ongoing payment of a utility bill, Vogel included the following additional language in subsequent conveyances:

The grantor herein contemplates the establishment of a non-profit corporation to be known as The Ledges of Hidden Hills Homeowners Association, and by acceptance of this deed the grantees agree to become and shall automatically so become members of said Homeowners Association when so formed by said grantor; and said grantees agree to abide by the corporate charter, bylaws, and rules and regulations of said Homeowners Association and agree to pay prorata [sic] charges and assessments which may be levied by said Homeowners Association when so formed. Until the above contemplated Homeowners Association is formed or in the event the same is not formed, the grantor reserves the right to assess the above- described lot and the owners thereof an equal pro-rata [sic] share of the common expense for electrical street lights and electrical subdivision entrance sign lights and any other common utility expense for various lots within the Subdivision.

(Emphasis added.) This language appears in each petitioner's deed, together with a reference to the previously recorded Declaration. Because specific language in a deed governs related general language, we determine that assessments for "common expense" for "electrical" service are the kind of assessments that the deed provides "may be levied by the Homeowners Association." *See Smith v. Mitchell*, 301 N.C. 58, 67, 269 S.E.2d 608, 614 (1980) (applying the maxim "the specific controls the general" to construction of a restrictive deed covenant). Our conclusion is supported by the deposition of Edward T. Vogel, President of Vogel Development Corporation, taken during this action. In his deposition, Mr. Vogel agreed that the assessment provision was added so that Vogel would not be responsible for paying the electric bill indefinitely.

Articles of Incorporation for the Ledges Homeowners' Association (Association) were not filed with the Secretary of State until 20 September 1994. The Articles provide that the Association is incorporated for the purposes of "upkeep, maintenance and beautification of the common amenities of [the Ledges]," "enforcement of the restrictive covenants of [the Ledges]," and engag[ing] in any other lawful activities allowed for non-profit corporations under the laws of the State of North Carolina."

Sometime before the Association's first annual meeting in 1995, the Association's three-member Board of Directors adopted by-laws. These by-laws set forth the Association's powers and duties, which included the operation, improvement, and maintenance of common areas; determination of funds needed for operation, administration, maintenance, and management of the Ledges; collection of assessments and common expenses; and employment and dismissal of personnel.
Such bylaws are "administrative provisions" adopted for the "internal governance" of the Association. *Black's Law Dictionary* 193 (7th ed. 1999) [hereinafter *Black's*]. "The bylaws [of a nonprofit corporation] may contain any provision for "regulating and managing the affairs of the corporation," but no bylaw may be "inconsistent with law." N.C.G.S. § 55A-2-06 (2005). As explained below, in a community that is not subject to the North Carolina Planned Community Act, the powers of a homeowners' association are contractual and limited to those powers granted to it by the declaration. Therefore, to be consistent with law, an association's by-laws must necessarily also be consistent with the declaration.

At the first annual meeting, the by-laws were amended to provide that the Association would have a lien on the lot of any owner who failed to pay an assessment. Thereafter, the Association began assessing lot owners for the bills incurred for lighting the Ledges entrance sign. Additionally, the Association assessed owners for mowing the roadside on individual private lots along Sunlight Ridge Drive, for snow removal from subdivision roads, and for operating and legal expenses. By affidavit submitted in support of petitioners' motion for summary judgment, petitioner Vivian Armstrong stated that the annual electrical bill for the sign is less than sixty cents per lot per month or approximately seven dollars and twenty cents per year; however, the Association has billed lot owners total assessments of approximately eighty to one hundred dollars per year.

On 18 June 2003, Armstrong sent an e-mail to the President of the Association, Marvin Katz, challenging the validity of these assessments:

Since purchasing property here, we've received two invoices from the Ledges homeowner's [sic] association. In good faith, we relied upon the representation that the money was legitimately owed. We've recently learned that the nature of the homeowner's [sic] association has been misrepresented. Therefore, we ask for a full and immediate refund of $160.

Armstrong requested that the matter be placed on the agenda of the officers' next meeting. At a meeting held on 16 July 2003, the board amended the Association by-laws again, greatly expanding the entity's enumerated powers and duties. In particular, the amended by-laws provided that the Association shall have the power to "[i]mpose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Fifty Dollars ($150.00) per violation (on a daily basis for continuing violations) of the Restrictive Covenants, Bylaws, and Rules and Regulations of the Association pursuant to Section 47F-3-107.1 of the North Carolina Planned Community Act." Several additional amended provisions also referenced the Planned Community Act.On 1 August 2003, petitioners Robert and Vivian Armstrong sent a letter to the Association requesting termination of their membership. On 8 August 2003, petitioners L.A. and E. Ann Moore requested termination of their Association membership as well. In their letter, the Moores stated:

We chose this particular property last year for several reasons. After a thorough search of Western North Carolina and the Hendersonville/Brevard area, in particular, we decided expressly against living in a gated community with "all the amenities." Golf courses, swimming pools and clubhouses are not our choice for daily living. Walking trails, while enjoyable and convenient, are but another source of assessment we don't need.

The Ledges appeared to be the answer to our desires, and until recent events we've been sure of it. The current Covenants are more restrictive than any other area in which we've resided, but not unreasonably so. While receptive to OPEN discussion of a small change or two, we are adamant in our opposition to the expressed plan of The Board to turn us into a Planned Community. (Emphasis added.)

On 17 October 2003, petitioners filed a declaratory judgment action in Superior Court, Henderson County, seeking, among other relief, a declaration that the Ledges is not a "planned community" as defined by N.C.G.S. § 47F-1-103 (23) and that the amended by-laws are unenforceable. Thereafter, on 20 November 2003, the Ledges' Board of Directors amended the Association by-laws to omit any reference to North Carolina's Planned Community Act.

On 24 November 2003, a majority of the Association members adopted "Amended and Restated Restrictive Covenants of the Ledges of the Hidden Hills" (Amended Declaration). The Amended Declaration contains substantially different covenants from the originally recorded Declaration, including a clause requiring Association membership, a clause restricting rentals to terms of six months or greater, and clauses conferring powers and duties on the Association which correspond to the powers and duties previously adopted in the Association's amended by-laws.

Additionally, the Amended Declaration imposes new affirmative obligations on lot owners. It contains provisions authorizing the assessment of fees and the entry of a lien against any property whose owner has failed to pay assessed fees for a period of ninety days. According to the Amended Declaration, such fees are to be "assessed for common expenses" and "shall be used for the general purposes of promoting the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board." Special assessments may be made if the annual fee is inadequate in any year; however, surplus funds are to be retained by the Association. Unpaid assessments bear twelve percent interest per annum.

Petitioners amended their complaint in early December 2003 to reflect the November changes to the Association by-lawsand original Declaration. Petitioners asserted five claims for relief, seeking: (1) a declaration that the Ledges is not subject to the Planned Community Act, (2) a declaration that the amended Association by-laws are invalid and unenforceable, (3) a declaration that lot owners are not required to join the Association or otherwise be bound by actions of the Association, (4) a declaration that the Amended Declaration is invalid and unenforceable, and (5) a permanent injunction preventing the

Association from enforcing the amended by-laws or recording the Amended Declaration. In their answer to the amended complaint, respondents admitted that neither the amended by-laws nor the Amended Declaration subjected the Ledges to North Carolina's Planned Community Act. (See footnote 1)

Both petitioners and respondents moved for summary judgment, submitting multiple affidavits and exhibits in support of their positions. Following a hearing, the trial court granted respondents' motion for summary judgment, denied petitioners' motion for summary judgment, and dismissed petitioners' claims with prejudice. In so doing, the court found that the Amended Declaration was valid and enforceable. Petitioners then appealed to the North Carolina Court of Appeals. The Court of Appeals determined that the plain language of the Declaration is sufficient to support any amendment thereto made by a majority vote of Association members, noting "the declaration provides, 'that any portion of the restrictive covenants may be released, changed, modified or amended by majority vote of the then property owners within this Subdivision.'" *Armstrong v. Ledges Homeowners Ass'n*, ___ N.C. App. ___, ___, 620 S.E.2d 294, 297 (2005). The court further concluded that

[p]roviding for mandatory membership in the [A]ssociation and permitting the [A]ssociation to assess and collect fees from the [A]ssociation's members is not clearly outside the intention of the original restrictive covenants and is generally consistent with the rights and obligations of lot owners of subdivisions subject to restrictive covenants and homeowners' associations.

Id. at ___, 620 S.E.2d at 298. Accordingly, the Court of Appeals affirmed the trial court's order of summary judgment in favor of respondents.

Robert and Vivian Armstrong then filed a petition for discretionary review in this Court, arguing that the Court of Appeals erred by determining that the scope of the disputed amendment does not exceed the authority granted to the Association in the covenants contained in the original Declaration. Petitioners did not seek discretionary review of remaining issues resolved by the Court of Appeals. This Court granted the Armstrongs' petition on 26 January 2006. The word covenant means a binding agreement or compact benefiting both covenanting parties. *See generally Black's* 369; *The American Heritage Dictionary of the English Language* 432 (3rd ed. 1992) [hereinafter *Heritage*]; *Random House Webster's College Dictionary* 314 (1991) [hereinafter *Webster's*]. A covenant represents a meeting of the minds and results in a relationship that is not subject to overreaching by one party or sweeping subsequent change.

Covenants accompanying the purchase of real property are contracts which create private incorporeal rights, meaning non-possessory rights held by the seller, a third-party, or a group of people, to use or limit the use of the purchased property. *See Wise v. Harrington Grove Cmty. Ass'n*, 357 N.C. 396, 401, 584 S.E.2d 731, 735-36 (2003) (stating that courts will enforce a real covenant in the same manner as any other contract); *Karner v. Roy White Flowers, Inc.*, 351 N.C. 433, 436, 527 S.E.2d 40, 42 (2000) (stating that covenants create incorporeal rights); Robert G. Natelson, *Law of Property Owners Associations* §§ 2.1, 2.3.3.1 (1989) (discussing the characteristics of servitudes and contractual servitudes) [hereinafter *Law of Associations*]. Real covenants "run with the land," creating a servitude on the land subject to the covenant. *Runyon v. Paley*, 331 N.C. 293, 299-300, 416 S.E.2d 177, 182-83 (1992) (explaining that a restrictive covenant is a real covenant if "(1) the subject of the covenant touches and concerns the land, (2) there is privity of estate between the party enforcing the covenant and the party against whom the covenant is beingenforced, and (3) the original covenanting parties intended the benefits and burdens of the covenant to run with the land") (emphasis added). An enforceable real covenant is made in writing, properly recorded, and not violative of public policy. *J. T. Hobby & Son, Inc. v. Family Homes of Wake Cty, Inc.*, 302 N.C. 64, 71, 274 S.E.2d 174, 179 (1981) (Real covenants may not offend "articulated considerations of public policy or concepts of substantive law."); *Cummings v. Dosam, Inc.*, 273 N.C. 28, 32, 159 S.E.2d 513, 517 (1968) (stating that real covenants must be in writing); *Hege v. Sellers*, 241 N.C. 240, 248, 84 S.E.2d 892, 898 (1954) (stating that real covenants must be recorded).

Real covenants are either restrictive or affirmative. Classic restrictive covenants include covenants limiting land use to single family residential purposes and establishing setback and side building line requirements. Affirmative covenants impose affirmative duties on landowners, such as an obligation to pay annual or special assessments for the upkeep of common areas and amenities in a common interest community.

Because covenants originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to the original intent of the parties; however, covenants are strictly construed in favor of the free use of land whenever strict construction does not contradict the plain and obvious purpose of the contracting parties. *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238 (1967) ("[T]he fundamental rule is that the intention of the parties governs" construction of real covenants.). *But see Wise*, 357 N.C. at 404, 584 S.E.2d at 737(When a covenant infringes on common law property rights, "'[a]ny doubt or ambiguity will be resolved against the validity of the restriction.'" (quoting *Cummings*, 273 N.C. at 32, 159 S.E.2d at 517)); *J. T. Hobby & Son, Inc.*, 302 N.C. at 71, 274 S.E.2d at 179 ("The rule of strict construction is grounded in sound considerations of public policy: It is in the best interests of society that the free and unrestricted use and enjoyment of land be encouraged to its fullest extent."). Moreover, the North Carolina Court of Appeals has held that affirmative covenants are unenforceable "unless the obligation [is] imposed in clear and unambiguous language which is sufficiently definite to guide the courts in its application." *Beech Mountain Prop. Owner's Ass'n v. Seifart*, 48 N.C. App. 286, 288, 295-96, 269 S.E.2d 178, 179-80, 183 (1980) (concluding that covenants requiring an assessment for "'road maintenance and maintenance of the trails and recreational areas,'" "'road maintenance, recreational fees, and other charges assessed by the Association,'" and "'all dues, fees, charges, and assessments made by that organization, but not limited to charges for road maintenance, fire protection, and security services'" were not sufficiently definite and certain to be enforceable); *see also Allen v. Sea Gate Ass'n*, 119 N.C. App. 761, 764-65, 460 S.E.2d 197, 199-200 (1995) (holding that a covenant requiring an assessment "'for the maintenance, upkeep and operations of the various areas and facilities by Sea Gate Association, Inc.'" was void because there was no standard by which a court could assess how the Association chooses the properties to maintain); *Snug Harbor Prop. Owners Ass'n v.Curran*, 55 N.C. App. 199, 203-04, 284 S.E.2d 752, 755 (1981) (holding that covenants requiring owners to pay an annual fee for the "'[m]aintenance and improvement of Snug Harbor and its appearance, sanitation, easements, recreation areas and parks'" and "'[f]or the maintenance of the recreation area and park'" were not enforceable because there was "no standard by which the maintenance [was] to be judged"), *disc. rev. denied*, 305 N.C. 302, 291 S.E.2d 151 (1982). *But see Figure Eight Beach Homeowners' Ass'n v. Parker*, 62 N.C. App. 367, 371, 377, 303 S.E.2d 336, 339, 342 (concluding that a covenant authorizing an assessment for "'[m]aintaining, operating and improving the bridges; protection of the property from erosion; collecting and disposing of garbage, ashes, rubbish and the like; maintenance and improvement of the streets, roads, drives, rights of way, community land and facilities, tennis courts, marsh and waterways; employing watchmen; enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Company to keep the property in neat and good order and to provide for the health, welfare and safety of owners and residents of Figure Eight Island'" was enforceable because the purpose of the assessment was described with sufficient particularity), *disc. rev. denied*, 309 N.C. 320, 307 S.E.2d 170 (1983). The existence of definite and certain assessment provisions in a declaration does not imply that subsequent additional assessments were contemplated by the parties, and courts are "'not inclined'" to read covenants into deeds when the parties have left them out. *See Wise*, 357 N.C. at 407, 584S.E.2d at 739-40 (quoting *Hege*, 241 N.C. at 249, 84 S.E.2d at 899).

Developers of subdivisions and other common interest communities establish and maintain the character of a community, in part, by recording a declaration listing multiple covenants to which all community residents agree to abide. *See generally* Law of Associations, § 2.4 (discussing servitudes and the subdivision declaration). Lot owners take their property subject to the recorded declaration, as well as any additional covenants contained in their deeds. Because covenants impose continuing obligations on the lot owners, the recorded declaration usually provides for the creation of a homeowners' association to enforce the declaration of covenants and manage land for the common benefit of all lot owners, thereby preserving the character of the community and neighborhood property values. *Id.* § 3.1 (discussing distinguishing characteristics of the property owners' association). In a community that is not subject to the North Carolina Planned Community Act, the powers of a homeowners' association are contractual and are limited to those powers granted to it by the declaration. *Wise*, 357 N.C. at 401, 584 S.E.2d at 736 ("[U]nder the common law, developers and lot purchasers were free to create almost any permutation of homeowners association the parties desired."). *Cf.* N.C.G.S. § 47F-3-102 (2005) (enumerating the powers of a planned community's homeowners association); *id.* § 47F-1-102, N.C. cmt. (2005) (naming powers that may apply retroactively to planned communities created before the effective date of the Act). Although individual lot owners may voluntarily undertake additional responsibilities that are not set forth in the declaration, or undertake additional responsibilities by mistake, lot

owners are not contractually bound to perform or continue to perform such tasks.

Declarations of covenants that are intended to govern communities over long periods of time are necessarily unable to resolve every question or community concern that may arise during the term of years. *See* 2 James A. Webster, Jr., *Webster's Real Estate Law in North Carolina* § 18-10, at 858 (Patrick K. Hetrick & James B. McLaughlin, Jr., eds., 5th ed. 1999) (noting that a homeowners' association often takes over service and maintenance responsibilities from the developer in a planned transfer to ensure continuation of these operations in the future). This is especially true for luxury communities in which residents enjoy multiple common areas, private roads, gates, and other amenities, many of which are staffed and maintained by third parties. *See* Patrick K. Hetrick, Wise v. Harrington Grove Community Association, Inc.: *A Pickwickian Critique: The North Carolina Planned Community Act Revisited*, 27 Campbell L. Rev. 139, 171-73 (2005) (comparing the administrative and legal needs of a modest subdivided hypothetical neighborhood, "Homeplace Acres," with those of a hypothetical "upscale residential land development," "Sweet Auburn Acres"). For this reason, most declarations contain specific provisions authorizing the homeowners' association to amend the covenants contained therein. The term amend means to improve, make right, remedy, correct an error, or repair. *See generally Black's* at 80; *Heritage* at 44; *Webster's* at 59. Amendment provisions are enforceable; however, such provisions give rise to a serious question about the permissible scope of amendment, which results from a conflict between the legitimate desire of a homeowners' association to respond to new and unanticipated circumstances and the need to protect minority or dissenting homeowners by preserving the original nature of their bargain. *See Wise*, 357 N.C. at 401, 584 S.E.2d at 736 ("A court will generally enforce [real] covenants '"to the same extent that it would lend judicial sanction to any other valid contractual relationship."'" (quoting *Karner*, 351 N.C. at 436, 527 S.E.2d at 42 (citation omitted)); *see also* 2 Restatement (Third) of Property: Servitudes § 6 Introductory Note at 71 (2000) ("The law should facilitate the operation of common interest communities at the same time as it protects their long-term attractiveness by protecting the legitimate expectations of their members.") (emphasis added). In the same way that the powers of a homeowners' association are limited to those powers granted to it by the original declaration, an amendment should not exceed the purpose of the original declaration.

In the case *sub judice*, petitioners argue that the affirmative covenants contained in their deeds authorize only nominal assessments for the maintenance of a lighted sign at the subdivision entrance; thus, the Association's subsequent amendment of the Declaration to authorize broad general assessments to "promot[e] the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board" is invalid and unenforceable. Respondents contend that the Declaration of Restrictive Covenants expressly permits the homeowners' association to amend the covenants; thus, any amendment that is adopted in accordance with association by- laws and is neither illegal nor against public policy is valid and enforceable, regardless of its breadth or subject matter. We hold that a provision authorizing a homeowners' association to amend a declaration of covenants does not permit amendments of unlimited scope; rather, every amendment must be reasonable in light of the contracting parties' original intent. (See footnote 2) A disputing party will necessarily argue that an amendment is reasonable if he believes that it benefits him and unreasonable if he believes that it harms him. However, the court may ascertain reasonableness from the language of the original declaration of covenants, deeds, and plats, together with other objective circumstances surrounding the parties' bargain, including the nature and character of the community. For example, it may be relevant that a particular geographic area is known for its resort, retirement, or seasonal "snowbird" population. Thus, it may not be reasonable to retroactively prohibit rentals in a mountain community during ski season or in a beach community during the summer. Similarly, it may not be reasonable to continually raise assessments in a retirement community where residents live primarily on a fixed income. Finally, a homeowners' association cannot unreasonably restrict property rental by implementing a garnishment or "taking" of rents (which is essentially an assessment); although it may be reasonable to restrict the frequency of rentals to prevent rented property from becoming like a motel.

Correspondingly, restrictions are generally enforceable when clearly set forth in the original declaration. Thus, rentals may be prohibited by the original declaration. In this way, the declaration may prevent a simple majority of association members from turning established non-rental property into a rental complex, and vice-versa.In all such cases, a court reviewing the disputed declaration amendment must consider both the legitimate needs of the homeowners' association and the legitimate expectations of lot owners. A court may determine that an amendment is unreasonable, and, therefore, invalid and

unenforceable against existing owners who purchased their property before the amendment was passed; however, the same court may also find that the amendment is binding as to subsequent purchasers who buy their property with notice of a recorded amended declaration.

Here, petitioners purchased lots in a small residential neighborhood with public roads, no common areas, and no amenities. The neighborhood consists simply of forty-nine private lots set out along two main roads and four *cul de sacs*. Given the nature of this community, it makes sense that the Declaration itself did not contain any affirmative covenants authorizing assessments. Neither the Declaration nor the plat shows any source of common expense.

Although petitioners' deeds contain an additional covenant requiring lot owners to pay a pro rata share of the utility bills incurred from lighting the entrance sign, it is clear from the language of this provision, together with the Declaration, the plat, and the circumstances surrounding installation of the sign, that the parties did not intend this provision to confer unlimited powers of assessment on the Association. The sole purpose of this additional deed covenant was to ensure that the developer did not remain responsible for lighting the entrance sign after the lots were conveyed. Payment of the utility bill is the single shared obligation contained in petitioners' deeds, and each lot owner's pro rata share of this expense totals approximately seven dollars and twenty cents per year.

For these reasons, we determine that the Association's amendment to the Declaration which authorizes broad assessments "for the general purposes of promoting the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board" is unreasonable. The amendment grants the Association practically unlimited power to assess lot owners and is contrary to the original intent of the contracting parties. Indeed, the purposes for which the Association has billed additional assessments of approximately eighty to one hundred dollars per year are unrelated to all other provisions of the deeds, Declaration, and plat: for example, assessments for mowing land that the plat clearly designates as private property and assessments for snow removal from roads that the plat clearly designates as public.

For the reasons stated above, we conclude that the disputed amendment is invalid and unenforceable. In so doing, we echo the rationale of the Supreme Court of Nebraska in *Boyles v. Hausmann*, 246 Neb. 181, 191, 517 N.W.2d 610, 617 (1994): "The law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes in existing covenants." Here, petitioners purchased their lotswithout notice that they would be subjected to additional restrictions on use of the lots and responsible for additional affirmative monetary obligations imposed by a homeowners' association. This Court will not permit the Association to use the Declaration's amendment provision as a vehicle for imposing a new and different set of covenants, thereby substituting a new obligation for the original bargain of the covenanting parties. Accordingly, we reverse the opinion of the North Carolina Court of Appeals and remand this case to that court for further remand to the trial court for additional proceedings not inconsistent with this opinion.
REVERSED AND REMANDED.

Justice MARTIN did not participate in the consideration or decision of this case.

Footnote: 1 N.C.G.S. § 47F-1-103(23) (2005) defines a planned community as "real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration." The Planned Community Act does not apply to any community that does not meet this definition.

Footnote: 2 A number of other states considering amendments to the founding documents of common interest communities have also applied a reasonableness standard. See Hutchens v. Bella Vista Vill. Prop. Owners' Ass'n, 82 Ark. App. 28, 37, 110

S.W.3d 325, 330 (2003) (concluding "the power of . . . [a] homeowner's [sic] association . . . to make rules, regulations, or amendments to its declaration or bylaws is limited by a determination of whether the action is unreasonable, arbitrary, capricious, or discriminatory"); Holiday Pines Prop. Owners Ass'n v. Wetherington, 596 So. 2d 84, 87 (Fla. Dist. Ct. App. 1992) (per curiam) ("In determining the enforceability of an amendment to restrictive covenants, the test is one of reasonableness."); Zito v. Gerken, 225 Ill. App. 3d 79, 81, 587 N.E.2d 1048, 1050 (1992) ("A restrictive covenant which has been modified, altered or amended will be enforced if it is clear, unambiguous and reasonable."); Buckingham v. Weston Vill. Homeowners Ass'n, 1997 ND 237, .10, 571 N.W.2d 842, 844 (A condominium association's amendment to the declaration or bylaws "must be reasonable" and "a rule which is unreasonable, arbitrary, or capricious is invalid."); Worthinglen Condo. Unit Owners' Ass'n v. Brown, 57 Ohio App. 3d 73, 75-76, 566 N.E.2d 1275, 1277 (1989) (adopting "the reasonableness test, pursuant to which the validity of condominium rules is measured by whether the rule is reasonable under the surrounding circumstances"); Shafer v. Bd. of Trs. of Sandy Hook Yacht Club Estates, Inc., 76 Wash. App. 267, 273-74, 883 P.2d 1387, 1392 (1994) (a covenant amendment "respecting the use of privately-owned property is valid, provided that suchpower is exercised in a reasonable manner consistent with the general plan of the development"), disc. rev. denied, 127 Wash. 2d 1003, 898 P.2d 308 (1995).

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges of Hidden Hills

"First they ignore you, then they laugh at you, then they fight you, then you win!"

Ghandi

In June 2003, Hendersonville attorney Walter Carpenter answered four questions concerning the legal nature of the Ledges homeowner's association and the extent to which the original Restrictive Covenants could be amended. On August 18, 2006, the North Carolina Supreme Court affirmed Mr. Carpenter's judgment. Furthermore, the Court concluded among other things that the Amended Restated Covenants are "unreasonable....invalid and unenforceable".

Over three years and legal fees totaling upwards of $80,000., the facts are unchanged.

1. The original 1988 Covenants remain in effect and are fully enforceable.

2. The corporation known as the Ledges homeowner's association is a by-invitation-only private club which since 1994 has misrepresented its authority and illegally collected tens of thousands of dollars.

Rules Are Not Sacred, Principles Are!

The following is one of several requests made to the homeowner's association president after the Supreme Court ruled against the association.

Bill and Ursula Jenrette wrote:

Dear Mr. Katz:

The recent decision handed down by the NC Supreme Court in regards to the lawsuit brought by The Armstrongs, Moore's and Clore's against The Ledges Homeowner's Association which was recently ruled in their favor states clearly that dues collected from homeowners in The Ledges subdivision, over and above those needed to pay for the lighting at the entrance to the subdivision, were collected improperly.

Therefore, I am requesting that the dues paid by me to the homeowner's association over and above my share of the lighting cost be refunded in full. In addition, I am also requesting that any fees that were assessed to me and subsequently paid by me to the association to defend the association and its officers against this lawsuit be included in the refund.

You should recall that I was one of the first homeowner's to object to the action being taken by the association to revise the covenants and by laws that I believed infringed on my property rights and at that time urged you and those who were influenced by your ideas to abandon the course of action you had embarked upon. If I had been residing in my home at the time I hope I would have had the strength to join the plaintiffs in their suit, and in retrospect should have done so as an absentee owner in order to help them with the financial burden they undertook in order to defend the rights of all property owners from being run over by a majority hell-bent on having their way.

Fortunately, the Armstrongs were tenacious enough to follow their beliefs as far as necessary to find justice. Thankfully, in America we still have the right to seek justice through our court system and thankfully the NC Supreme Court agrees and has vindicated their tenacity. Since you have had the use of the funds I paid interest free for several years now, I'm sure that you take care of this request promptly. Please send the refund to my home address shown below.

Sincerely,

Bill Jenrette

To: North Carolina House Select Committee on Homeowners Associations

Date: February 2, 2010

Co-Chairs Weiss and MeGee, and Members of the Committee:

First, I want to thank you for providing this opportunity today for citizens to submit our thoughts and suggestions about HOAs in NC. The creation of this Committee was welcome news to me! It reinforces my confidence in participatory democracy in our state, and demonstrates that our Legislature is addressing contemporary issues of importance to ordinary citizens.

My husband and I have owned our home in a western Wake County subdivision since 2001. We had never been members of, or even encountered an HOA in the states where we'd lived before. Since 2002, I served on our HOA Board of Directors (the governing body of our subdivision) for three years, as president for one, and my husband currently serves on the Board. So, I have experienced HOA operations from the inside and out, the good and the ugly.

Let me say here that I love living in the beautiful and bountiful state of NC! Likewise, I enjoy the community where I live, and we have many good neighbors and friends there. But, from what I have observed in my community and elsewhere, HOAs have far outlived and exceeded whatever usefulness they may have had. Moreover, in these challenging economic times, it is not surprising that HOAs are now encountering difficulties in demonstrating their relevance, in compliance with covenants, and in collection of dues and fines from residents. HOA government is ineffective, or worse, for numerous reasons:

1) Widespread use by developers of standard "boiler-plate" in the covenants that was out-dated at the time the communities were created, is grossly out-of-date now, and barely relevant to specific, diverse communities;

2) Lack of interest by residents in understanding, abiding by, or updating the covenants and other governing documents;

3) Failure by HOAs to hold more than one required meeting per year or otherwise to provide sufficient means of communication with and among HOA members;

4) Inconsistency in HOA operations, policies, and enforcement, from year to year, as members of governing boards change;

5) Lack of accountability for HOA board members, and

6) Arbitrary decision-making due to lack of knowledge, qualifications, commitment - and I would suggest, courage - by many who serve on HOA governing bodies.

Here are some examples from my own HOA of the above deficiencies. Executive board members have asserted that any decisions made, or policies enacted by previous Boards are irrelevant and can be reversed or altered at will. This results in confusion among homeowners, a sense of not knowing what to expect next. Some of our boards have not followed Roberts Rules in their meetings, or any set of guidelines. Some have followed a practice of not taken formal votes, not recording votes taken, and of not keeping formal minutes. In addition, requests for board meeting minutes by residents have not been honored, or encountered undue delay, and then access to minutes was restricted (e.g., residents could look at the minutes in the company of a board member but could not have a copy).

Architectural restrictions are selectively and inconsistently enforced, or ignored altogether. A few years ago, our HOA board declared that it was incumbent upon adjacent homeowners to address covenant and architectural violations by their neighbors. In other words, if adjacent neighbors did not object to the violation, it would not be addressed by the HOA. But if adjacent neighbors did object, enforcement was incumbent upon those neighbors, and, if their warnings were ignored, ultimately the HOA board might address it. This obviously results in compliance inconsistencies from block to block.

Other rules are not enforced – such as prohibiting consumption of alcoholic beverages at the pool – because board members themselves like to drink at the pool, or they do not want to confront their neighbors who are in violation. Outgoing board members have been compensated for service from HOA bank accounts, even though the covenants prohibit it. Further, the covenants relieve executive board members of any liability or accountability for their official actions, unless the actions are of direct financial benefit them. I believe this is standard exclusionary language in community covenants in NC. And while it has understandable merit, it renders homeowners effectively defenseless against arbitrary and self-serving actions by board members.

One of the distinctive amenities in my community is a barn and pastures for seven horses. It is a co-op facility; it has no manager or paid caretakers. Rather, horseowners pay for use of the facility while purchasing their own horses' feed, hay, etc., and doing all of the daily work required to care for their horses themselves. Members of the HOA board are often not horse-owners, so they lack the expertise or interest necessary to operate such a facility. Over the years, many arbitrary, uninformed, and even damaging decisions – some endangering the safety and welfare of the horses - have been made. Some boards have accepted responsibly in the operation and upkeep of this amenity, but others have actually taken a passive or even punitive stance against it – e.g., declaring that no general HOA funds would be directed toward maintenance or upkeep of the facility, frequently changing the terms of the stall leases that horse-owners sign, failing to enforce barn rules, and trying to prohibit homeowners who have horses from serving on the board, although they pay HOA dues plus additional monthly fees to keep horses.

Some of the actions and abuses I have cited are in violation of NC law, as well as community covenants. Yet, there is no recourse that I am aware of, for homeowners who

are affected or harmed by these decisions, other than to hire their own lawyers and file legal action. For individual homeowners, finding legal counsel to represent them in such situations is not only cost prohibitive, but nearly impossible. Lawyers advise that legal actions against HOAs are futile because HOAs are effectively unaccountable in NC, are free to do whatever they wish, and courts do not rule otherwise.

When the town of Fuquay-Varina moved to annex our community a couple of years ago, I was one of the few who hoped it would happen. But, due to the Legislature's call for a halt to such annexations, it did not happen. Although my household would have incurred added expense for connecting to the town's sewer and water systems, we would have preferred those utility services over the inadequate ones we have now. In addition, annexation would have increased our fire and police protection. For these reasons and more, I believe that annexation would have enhanced not only our property value but our quality of life. But moreover, I favored annexation because, having experienced the shortcomings and abuses of "private government" as practiced by HOAs, I prefer public government. The proliferation and abuses of these private governments in NC should be a wake-up call to us all.

Recommendation: While I do not object to the HOA dues I pay, I would far prefer that my "tax money" went to support the services of the legitimate local, state and federal governments already in place and that have constitutional foundations. But I doubt whether the elimination of HOAs as we know them in NC is realistic. This would not even be in my best interest, since as a horse-owner, I benefit from our HOA-owned barn. So, I suggest that tighter state control over HOAs is called for, and that official oversight – in the form of a state ombudsman, board, commission, or agency – should be established. The officers of these organizations must be accountable, and their actions, subject to review. Citizen homeowners throughout the state - whose very homelives and the protection of their property - are directly affected by HOA actions, deserve some avenue of appeal outside of the HOA board itself and the courts.

Thank you for your time, consideration and efforts to address this issue!

Susan Barnard
5436 LaFayette Drive
Fuquay-Varina, NC 27526

Jayne Nelson (Rep. McGee)

From: Patbatleman@aol.com

Sent: Monday, February 01, 2010 6:34 PM

To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray

Subject: Comment for Public Hearing - Select Cmte on HOAs - 2/2/2010

I apologize for the lateness of this email. I would like to highlight two aspects of HOA governance that need assistance through the legislative process.

1. HOAs are in need of some protection from developers who create bylaws and covenants (usually using a template of documents from other associations) which they violate in the process of selling homes. Setback, fence heights and styles, patios, decks, storage buildings in areas designated "open space" or in violation of zoning, are often allowed installed by the developer, even when they do not comply with the documents. In our particular HOA, we now have a problem of trying to enforce the covenants among residents who (a) had these installed upon purchase; (b) want to install these additions but who point to a similar project that exists when they are turned down.

Further, in an effort to have all properties in compliance with the documents, the HOA is in the untenable position of trying to have the violating additions removed or returned to compliance. Owners simply refuse and threaten law suits. We are dealing with these issues at this time. We even have a group of residents who want the HOA to deed over the open space land their construction projects have encompassed in violation of the covenants. They need 80% approval of 100% of the residents, but still, you can see the type of problem that arises.

2. HOAs are also in need of protection from State agencies (e.g. DENR, etc.) charged with permitting during the development process but who improperly issue permits and approvals. This causes major headaches for the HOA; huge sums are spent in legal fees in an attempt to get relief from these costly errors. We have such a case going on right now.

3. Lastly, HOAs need protection from developers who surreptitiously violate zoning and environmental ordinances by burying construction waste in a camouflaged "berm."

Jayne Nelson (Rep. McGee)

Rec'd

From: Dan Bergbauer [bergbauer@suddenlink.net]
Sent: Friday, January 29, 2010 2:44 PM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Cc: Diana Starling
Subject: Public Hearing of The House Select Committee on Homeowners Associations
Attachments: Letter to Representatives Weiss and McGee Jan 2010.doc

Friday, January 29, 2010

The House Select Committee on Homeowners Associations

Attn: Ms Doty and Ms Nelson, Committee Assistants

I have recently become aware of the second public hearing of The House Select Committee on Homeowners Association, scheduled for February 2, 2010, in Raleigh. Since I will be unable to attend, I have attached a statement expressing my concerns that homeowners have little recourse in trying to get a board of directors to comply with and enforce the Covenants. Although the Covenants usually have a provision that states that a homeowner may enforce the Covenants if the board fails to do so, it usually requires taking legal action. In reality, this is impractical because the cost is generally prohibitive, and, if the case gets to court, judges are often not sympathetic with homeowners. As you also probably know, The Office of the Attorney General will not get involved in these disputes. There must be a way that is practical and affordable for homeowners to be able to challenge the unilateral actions of the boards that are in conflict with the Covenants or State statutes.

Please contact me if any questions.

Dan Bergbauer
252-940-1186

Statement for The House Select Committee on Homeowners Associations

Jan 29, 2010

Over the past 12 years, I have been a member of 2 different homeowners associations (HOAs) having mostly retired members, one in Moore County and one in Beaufort County. With both HOAs, the boards (comprised of home owner members only) have acted with virtual impunity in deciding how and when to apply and comply with the Covenants and other governing documents. In neither HOA was there a disputes clause in the Covenants. Trying to resolve disputes involving failures of the board to comply with the governing documents usually comes down to 2 options: elect new members or take legal proceedings. For the former, new members usually get subsumed into the board brotherhood and protect the previous board largely because of fear of becoming knowledgeable and thereby involved with the uncertainties, complexities, and legalities. For the latter, very few homeowners have a spare $50,000 or more, and judges have the reputation of not wanting to be bothered with wasting valuable time on what they consider such relatively petty matters.

On the more complex and controversial issues, boards are reluctant to get advice from an attorney largely because of the expense and not wanting to have to live with the advice. When a board does obtain a legal opinion, moreover, the board usually will refuse to make it available to the membership, claiming it to be privileged. I am also reminded that knowledge is power. Most times, the opinion will be very constrained based on limited information and direction usually supplied by the board president. In this way, the board is often able to manipulate the attorney to produce an opinion that favors the position of the board and not necessarily to the best interest of the membership.

A year ago, I sent a letter to the Attorney General expressing concern that successive boards of my HOA were involved in possible fraudulent scheming of NC statutes with another party and not protecting member rights. The Attorney General's Office declined to get involved.

A small group of us have tried without success for a number of years to get the board to enforce the terms of a lease contract (to operate and maintain a limited common element) that required compliance with certain provisions in the Covenants. This cost us thousands of dollars in getting legal advice from a prominent Raleigh attorney. The successive boards, however, have stonewalled and even tried unsuccessfully to amend the Covenants.

Our Covenants has a Rules paragraph that allows the board to make rules unilaterally for the use of any property to protect the value of lots, the aesthetic qualities of each community, and the tranquility of the owners. All such rules, moreover, are enforceable as though set out within the Covenants. In effect, this allows the board to override the Covenants.

My HOA has rules and procedures for forcing members to comply with the Covenants but nothing for forcing the board to comply. <u>What is sorely needed for the Covenants is the requirement for a disputes clause</u>, which would be used to resolve significant disputes between members and the board by involving a disinterested party with some form of mediation and/or arbitration. When a board refuses to participate, however, to what State agency can an appeal be made to require enforcement?

Submitted by: Daniel Bergbauer, 102 St Johns Ct, Chocowinity, NC 27817 252-940-1186

Record

Jayne Nelson (Rep. McGee)

From: joycemcarobest@msn.com
Sent: Monday, February 01, 2010 10:59 AM
To: jennifer.weiss@mcleg.net; Rep. William C. McGee
Subject: Public hearing re: NC statutes relating to Homeowners' Associations

North Carolina House Select Committee on Homeowners' Associations
Raleigh, NC

Attn: Representatives Weiss and McGee

When a homeowners association Board of Directors operates without regard to, and in violation of its state's condominium statutes, I am in the dark as to the avenues North Carolina provides to the homeowner for enforcement of the State's own statutes. I am interested in finding out who or what agency in this state has the authority to investigate complaints regarding mismanagement by a condominium association's Board of Directors that willfully disregards and/or only partially complies with existing NC State Statutes.

It seems wrong to me that a condominium owner would have to take on the financial burden of a private attorney in order to force a Board of Directors to comply with State Statutes that were put in place for his/her protection in the first place. Therefore, I am requesting that your committee address the obligation of the State of North Carolina to provide help to the home owner when decisions of a Board of Directors are at odds with present statutes.

Many thanks for your time and efforts on my behalf.

Joyce M. Best
joycemcarobest@msn.com
(828) 698-8024

Jayne Nelson (Rep. McGee)

Read

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01, 2010 4:57 PM
To: Jayne Nelson (Rep. McGee)
Subject: FW: hoa problems

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Lawrence Breyfogle [mailto:breyfogles@bellsouth.net]
Sent: Saturday, January 30, 2010 03:07 PM
To: Susan Doty (Rep. Weiss)
Subject: hoa problems

when the directors of a hoa do not follow the by laws and refuse to follow the by-laws the only alternative for the owners is to sue and this results in suing yourself. the other alternative is to replace the directors by voting them off the board. if you have a board of 7 this can be a several year process. suggest the state have a mediation process to review these type of problems and rule for or against the board. the mediation would be binding on the both parties. larry breyfogle, 910.458.9189

Jayne Nelson (Rep. McGee)

From: Gina Brooks [mommy927@yahoo.com]
Sent: Monday, February 01, 2010 12:37 PM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Subject: Fw: HOA Hearing
Attachments: February 1 hoa doc..docx

--- On **Mon, 2/1/10, Gina Brooks** ***<mommy927@yahoo.com>*** wrote:

From: Gina Brooks <mommy927@yahoo.com>
Subject: HOA Hearing
To: susan.doty@ncleg.net, jane.nelson@ncleg.net
Date: Monday, February 1, 2010, 12:16 PM

Good Morning Ladies,

I have attached a document regarding our problem with Eagle Ridge HOA.

Thanks
Gina Brooks

February 1, 2010

Susan Doty
Jane Nelson

Subject - HOA Problem

Good Morning Ladies,

I was sent a email from Diana Starling regarding problems with HOA. She asked that I send you an e-mail with our problem.

Our problem started a few years ago with Eagle Ridge HOA and Talis Management. We had paid our dues late (I really hate paying these dues because you should not have to pay to live in a decent neighborhood) Talis had added late charges and interest of over $200. I had paid that charge over the HOA dues. Payment had been posted the first week of the New Year, two weeks later Talis added attorney fees of $500.00. At this point I became very upset and got a attorney. We took our case to court and won (They had to remove our lien on our home) The letter we received from the Attorney did no state that this letter was a intent to collect a debt so there for they were in violation of a Federal Law that protect the people.

Talis and Eagle Ridge continued to add interest and attorney fees to our account. The amount they said was owed for over $1200.00. I had tried to contact our President and Vice President regarding the problem. I had talked with Eagle Ridge VP and to this date he has never contacted me regarding the issues.

We have gone back and forth to court and finally received a order from the courts for Eagle Ridge and Talis and Nelson Harris to remove the amount they said we still owed them. The Judge told Nelson Harris that his charges were not legal, only the courts tell the attorneys how much they are allowed to charge.

Our account has been put to -0- and a credit was posted to our account. I have asked Eagle Ridge HOA have you received a check from Nelson Harris for the amount that was credited to our account, NO ONE IN OUR HOA WILL ANSWER MY QUESTION. OUR HOA WILL NOT ANSWER AND OF THE QUESTIONS I HAVE ASKED.

I can say that since our legal problem the changes that followed – Talis no longer had Nelson Harris as their attorney – Also Eagle Ridge has changed Management company.

Our attorney has stated that everyone needs to pull together and file a class action lawsuit .

This is outline of what we all went through and the homeowners need to be in control and be free to fight and win. HOA's make it so that when you live in a HOA community its like living in a dictator community.

I will attempt to be there tomorrow, if you have any questions for thoughts please E-mail me back.

Thank-You for being there for us homeowners.

Gina Brooks
246 Mediate Dr
Raleigh, Nc 27603

Record

Jayne Nelson (Rep. McGee)

From: Diana Crews [djcrews@northstate.net]

Sent: Saturday, January 30, 2010 1:38 PM

Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray

Cc: jlaumann@hoa-usa.com

Subject: Public Hearing: Issues Related to Protection & Participation of Homeowner in the Governance of their Homeowners Associations.

Attachments: Issues Related to the Protection and Participation of Homeowners in the Governance of Their Homeowners Associations.doc

Members of the House Select Committee on Homeowners Associations:

Since I am unable to attend the House Select Committee on Homeowners Associations' public hearing on Tuesday, February 2, 2010, I have attached a memo addressing issues which concern me that I would ask to be made part of the record.

Thank you for your consideration of my concerns.

Diana J. Crews
1708 Huntington Circle
High Point, NC 27262
djcrews@northstate.net
336-882-9328

To: House Select Committee on Homeowners Associations
From: Diana J. Crews
1708 Huntington Circle, High Point, NC

Subject: Issues related to the protection and participation of homeowners in the governance of their homeowners associations:

1. Covering all planned communities
2. Enforcing Chapter 47F
3. Establishing a Planned Community Homeowner Protection Agency

Date: January 30, 2010

The North Carolina Planned Community Act, Chapter 47F is a very good bill that protects homeowners in planned communities. Unfortunately, not **all** planned communities are protected by **all portions** of the bill. Only those planned communities "created within this State on or after January 1, 1999"are covered by all sections of the bill. I urge the committee to consider a revision to Chapter 47F which would cover all planned communities including those planned communities which were created **before** January 1. 1999.

There is no enforcement provision in the current Planned Community Act. If an Association Board violates the Planned Community Act, individual members have very little recourse except to use their own personal finances to litigate, whereas Association Boards are covered by the Association's treasury.

Establishing a Homeowner Protection Agency similar to the Consumer Protection Agency, would at least give individual homeowners an opportunity to report abuses of the law.

Read

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01, 2010 4:59 PM
Jayne Nelson (Rep. McGee)
Subject: FW: home owners versus home owners associations

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Maryallen Estes [mailto:estesmaryallen@yahoo.com]
Sent: Saturday, January 30, 2010 04:55 PM
To: diana_starling_60@yahoo.com; Susan Doty (Rep. Weiss); jane.nelson@ncleg.net
Subject: home owners versus home owners associations

The House Select Committee on Home Owners Associations:

This is my story about the Home Owners Association in Mountain Heritage Estates, Burnsville, North Carolina. In 84 my husband and I purchased 5 and 1/8th acres of land in Mountain Heritage Estates. Our original covenant m[illegible] no mention of a home owner's association or assessments or a lien on our property if we didn't pay an assessment.

In 1988 we built the home I am presently living in. In 1991 we moved here permanently. In all those years, we have NEVER paid any assessments. In 2007 the land around us was purchased by the Mountain Lifestyle Development Corporation. They sent me documents to sign which contained requirements that I pay assessments and stated if I didn't pay, I would have a lien put on my property. I REFUSED TO SIGN AND HAVE NEVER PAID ANY ASSESSMENTS. I DO NOT BELONG TO THEIR HOME OWNERS ASSOCIATION. However, they sent me a bill for $334 to be paid every three months for their cost of doing business. The yearly fee would have been $1336. Even though I consulted an attorney who told them I was not subject to the Planned Community Act because I bought my land before 1999, they continued to send me bills and harass me.
Their attorney sent me a Claim for a Lien dated June 5, 2009. I consulted another attorney who sent their attorney, Robert Phillips, a nine page decision by the N.C. Supreme Court decided on in 2006 in favor of the Home Owners against the Home Owner's Association. The case was similar to mine.
My attorney, Sam Craig, called Mr. Phillips and asked why he thought my case was any different from the one that the N.C. Supreme Court decided on. He replied he would have to consult his clients, MLDC. Well, to this date we haven't heard from the MLDC or the attorney.
I had been told that after six months if the claimants had not set a court date to prove they deserved the lien, the document is null and void. The six months was over Dec. 5th. To make sure this lien was no longer in effect, I visited our clerk of the superior court, Warren Hughes, who informed me the document, in deed, was no longer valid. He also added I didn't have to do anything that it would be null and void automatically.
In spite of all the above, the Mountain Lifestyle Development Corporation continues to send me assessment bills. N[illegible] they ask $250 dollars every three months. I ignore every bill sent. First of all it is exorbitant for what they do w[illegible] is scraping the road every so often and blowing leaves off the road in the fall (a ridiculous waste of time and energy). When we had the last snow storm on December 18th, no one showed up to scrape the road. I paid a neighbor $100 to clear one mile of snow.

On Dec. 4, 2009 the gate to Mountain Heritage Estates would not open. I was trying to get out of the place to go grocery shopping as I had been out of town for two weeks. I returned home and told my son I couldn't get out. He went down to the gate, loosened two bolts and the gate opened. Long story short, the powers that be never fixed the gate until May, 2009!

The gate wouldn't close from the outside on Nov. 28, 2009. So far it still hasn't been fixed. Personally, I don't care if it ever closes again. I was never asked if I wanted a "gated" community in the first place. In fact I have never met the development people face to face. I only talked to one of them once. He was extremely rude. You see, I and my son are the only permanent residents in the Mountain Heritage Estates. I am eighty three years old and I don't need this kind of harassment.

Home Owner's Associations are just a way to take home owner's rights away from them and relieve the county from maintaining the roads.

My advice to anyone buying property, READ THE FINE PRINT, DON'T SIGN ANYTHING UNTIL YOU'VE READ IT AT LEAST THREE TIMES! If it sounds fishy, don't sign at all!

Please correct the abuses of these Johnny Come Lately buyers who try to impose restrictions on long time residents.

Thank you for your attention to this matter,
Sincerely,

Maryallen Estes, LCSW, Retired.

Date: February 1, 2010.

To: House Select Committee on Homeowners Associations.
Representative Jennifer Weiss
Representative William McGee

Cc: Diana Starling

From: Members of the Fairfield Harbour Property Owners Association.
1822-6 South Glenburnie Road, PMB #222
New Bern NC 28562

Dear Committee Members,

We are members of the Fairfield Harbour Property Owners Association in New Bern, North Carolina. Our community was established in 1972 and now has approximately 2825 members. We are a community with both retired and working families. Our Property Owners Association is a Non Profit Corporation operated by seven (7) Board members.

Over the last five (5) years our Property Owners Association Board of Directors (POABOD) has been under the control of a group of intervidуals that are out to change our community. They have made rules and regulations on their own authority and have refused the membership the opportunity to expand their voting rights. They have created documents that charge fees and impose rules that do not appear in our Declarations of Restrictions to accomplish their agenda. They ignore the bylaws and the Declaration of Restrictions because they get in the way of doing things. The following is part of a legal letter the POABOD received: "Most Board of Directors of most Associations are given the authority to adopt rules, regulations and guidelines by statute (47F-3-102 (1)) or by specific provisions in bylaws or restrictive covenant. The Board at Fairfield Harbour has no such general rule making authority."

The POABOD and Property Control Committee (PCC) have expanded our three page Declaration of Restriction section on building requirements into a fifty (50) page builder's application. This application dictates that the builder must do what the PCC requires, but if a builder is sued due to following their rules, the POABOD and PCC are to be held harmless. The application imposes a road maintenance fee, which is not mentioned in our Declaration of Restrictions. The Road fee has increased 100% over the last 5 years.

In 2009 the entire PCC resigned under what was a power struggle between the POABOD and the coequal PCC. The POABOD presented a "Document of Understanding" to the PCC. The PCC rejected the "document", and resigned stating that it shredded the Declaration of Restrictions.

In 2005 our Board presented a Declaration of Restriction change to restrict Boats, Trailers and RV's from being kept in residential yards. Following what was a very close vote, the communities billboard results changed over night, that put suspect on the results. It took over 3 years to get the votes recounted because the POABOD refused access to them. Only under threat by legal council to litigate the matter was ballot access finally permitted. A review of the ballots disclosed that the late votes were counted in the totals. A letter to the POABOD outlined these results along with documentation. The reply by the POABOD stated that "late does not have to mean late". The POABOD minutes also reflect that the ballot box was opened to " see how the vote was going".

The Annual Meeting held in May of 2009 was the first occasion that sign in sheets were provided to establish a quorum. We believe that the only reason this initial establishment of a Quorum occurred was that our group demanded to present a petition to the POABOD at the meeting. The POABOD has always been required to establish the quorum prior to installing new directors. We could have challenged the sitting board members because they had never been properly installed.

No one knew what a proxy was for and none were ever sent out. One half of our membership does not live in our development and many are out of state owners.

Currently our POABOD is on a quest to purchase the Amenities within the development. The property owners over the years have been told that the POABOD can not purchase the amenities. Our Declarations and Articles of Incorporation do not allow for the Property Owners Association dues to service debt. The Board has looked for two years to find a legal opinion that would state, "you can buy the Amenities". This venture will cost over 6 to 10 million dollars. The POABOD had a five-year projection for the dues that contained a 59% increase without the purchase of the Amenities. The property owners have no control over the POABOD spending, as a previous Board of Directors removed a budget approval provision by members from our bylaws years ago.

We have formed a group called Fairfield Harbour Property Owners Reform Team or FHPORT. Last year we petitioned the POA Board for bylaw changes to get more voting rights and spending caps. Thirty (30%) percent of the membership signed the petition. That was 903 voting members asking for a chance to vote on the changes. The POA Board refused to allow a vote and dismissed the petition.

Our group's members have contacted the following North Carolina Officials:
1) North Carolina Attorney Generals Office
2) North Carolina Secretary of States Office.
3) North Carolina Real Estate Commission.
4) Federal Government Representatives.
5) State Representatives
6) Local Government Representatives

All the Agencies and Representatives have said they could not help and that we needed to hire a lawyer to have our rights enforced. Most lawyers advise that to take on the Association you need to be ready to spend upwards of $100,000 dollars. The current law and State Government Agencies that control the Non Profit Corporations which most Homeowners Associations operate under are generally ineffective. Alternatively these agencies may not want to enforce the statutes. As a result, Property Owners are left fending for themselves against an organization that has virtually unlimited resources produced by our own dues with which to defend itself. All Homeowner Associations have insurance policies and we have been told "if you don't like it sue us". We as Property Owners clearly need help from our legislators and from State Agencies to protect our Rights. Laws need to change or new ones created to protect property owners and members of Associations from unscrupulous Homeowner Association Boards. Though our group FHPORT has organized in our community there are those who ridicule and demean people that take a different point of view. Challenging the powers of the establishment is a difficult undertaking. Any and all help would be appreciated and if you need to contact us please do so.

Sincerely,
Members of the Fairfield Harbour Property Owners Association and Members of FHPORT Inc.
Tom Cherney, Rich Marshall, Mandi Johnson, Tony Morello, Pat Byrne, Rich Edwards
252–617-6276

Jayne Nelson (Rep. McGee)

From: GGar104641@aol.com

Sent: Monday, February 01, 2010 4:48 PM

To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray

Cc: ggar104641@aol.com

Subject: SUGGESTED HOMEOWNER STATUTES SECTION ADDITION--MEETINGS NOTIFICATIONS

House Select Committee on Homeowner Associations
North Carolina House of Representatives

Chairperson: Representative Jennifer Weiss
Chairperson: Representative William C. McGee

Representative George C. Cleveland
Representative Beverly M. Earle
Representative Chris Heagarty
Representative Julia C. Howard
Representative Michael H. Wray

Honorable Chairpersons and Member Representatives:

During your upcoming hearings on Homeowner Association regulations and statutes, please consider reinstating a provision which was in the Statute several years ago but was removed in subsequent legislation to the detriment of association members who wish to follow the meetings of their association. That removal decreased the member tolerance by and commonality of the elected directors, and eliminated a source of association memory and expertise which ill serves associations.

Association boards are no longer required by statute to notify members of the date, time and location of board of directors meetings. In fact, some boards refuse to do so when asked by members and prefer to notify members later if they wish as to what was discussed and decided. This might have served developers well when boards were just forming but ill serves members whose associations have been turned over.

The suggested wording of a section of statute to correct such flagrant secrecy in the conduct of association business might read as follows:

The directors of association boards shall notify members of the association in advance of board meetings. Such notice shall be at least five days in advance or at least at same time and in the same manner as directors are notified.

Members shall be allowed to attend meetings to observe and listen. The board of directors shall have rules of order which will allow any member to comment before or after the meeting, stipulating time limits for the individual member to speak and rules of behavior. Minutes of members comments shall be taken in the same manner as board meeting minutes.

Reinstating the above would better serve North Carolina members of homeowner associations, especially since some associations are using the NC Statute as their operating document and noting the absence of any such law about meeting notification as justification for their actions.

Sincerely,

Association Member
George W. Gardner
3843 Daphine Drive
Wilmington, NC 28409-2847
910-792-9953
ggar104641@aol.com

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Tuesday, February 02, 2010 12:23 PM
[redacted] Rep. William C. McGee
Cc: Jayne Nelson (Rep. McGee)
Subject: FW: homeowners association public hearing 2-2-10 at 2 pm
Attachments: homeowners association - solar access hearing notes 2-2-10.doc; ATT00001.htm

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Harris, Rita E [mailto:rharris@nccommerce.com]
Sent: Tuesday, February 02, 2010 12:05 PM
To: Rep. Jennifer Weiss
Cc: Susan Doty (Rep. Weiss); Lenz, Ward; Leker, Bob; Morrison, John E; Shirley, Larry; Crisco, Keith; Carroll, Dale B
Subject: Fwd: homeowners association public hearing 2-2-10 at 2 pm

[redacted] Rep. Weiss
Our State Energy Office would like to make you aware of solar issues relating to your public hearing @ 2pm today in 643.
Thank you for your consideration. Please let us know if you have questions. -rita
Sent from my iPhone

Rita Harris
NC Commerce
919 332 0390

Begin forwarded message:

> **From:** "Leker, Bob" <bleker@nccommerce.com>
> **To:** "Harris, Rita E" <rharris@nccommerce.com>
> **Cc:** "Morrison, John E" <jmorrison@nccommerce.com>, "Lenz, Ward" <wlenz@nccommerce.com>, "Shirley, Larry" <lshirley@nccommerce.com>
> **Subject: homeowners association public hearing 2-2-10 at 2 pm**
>
> Rita,
> I have attached a memo I have prepared on some issues related the solar access law and homeowner associations.
> [redacted] Representative Jennifer Weiss is Chair of the House Select Committee on Homeowner's Associations. The Public Hearing is today at 2 pm in LOB 643.
> It would be helpful if the comments attached in the memo were forwarded to weissla@ncleg.net to alert Rep Weiss of these concerns that I have received.

Feel free to contact me for any further explanation.
Thanks,
Bob
****

Bob Leker
Renewables Program Manager
State Energy Office, NC Dept. of Commerce
MSC 1340, Raleigh, NC 27699
919-733-1907 (phone)
919-733-2953 (fax) bleker@nccommerce.com **(note new email)**
www.energync.net
Email correspondence to and from this address may be subject to the North Carolina Public Records Law "NCGS.Ch.132" and may be disclosed to third parties.

MEMORANDUM

TO: Rita Harris

CC: Ward Lenz
John Morrison
Larry Shirley

FROM: Bob Leker, Program Manager, State Energy Office, NC Department of Commerce

DATE: February 2, 2010

SUBJECT: Public Hearing for House Select Committee on Homeowners Associations 2/2/10 at 2 p.m. in LOB 643– Issues Related to Solar Access Law – Senate Bill 670, Session Law 2007-279 (Rep. Jennifer Weiss is Chair of the House Select Committee on Homeowners Associations)

Through the course of two years I have received a number of inquiries related to the above reference NC Law that attempts to prohibit ordinances, regulations, covenants, and other restrictions to the placement of solar technology on homes. These inquiries have come from homeowner associations, homeowners, and builders seeking clarification about the above legislation or wanting to develop guidelines supporting solar energy placement (in the case of homeowner associations). The legislation was intended to limit restrictions a local government or private community might place to installing solar energy systems. The clarity is necessary due to a number of issues, noted below, that have come to my attention. Some of the exceptions in the legislation allow prohibitions by a local government or private community in the following instances:

1. If the solar system is "visible to a person on the ground". Does this mean fully visible, partially visible – what if the system is only from the side? How tall is a person?.....
2. If the solar system "faces areas open to common or public access". What does "faces" mean? What does "open to common or public access"? Are these greenways, sidewalks, roads, etc?

Moreover, if the intention is to encourage solar system installations, those folks who have contacted me feel that that merely being visible should not be an issue. Solar collectors look very similar to skylights and may be better looking than satellite dishes or other equipment installed on a roof. Solar collector systems that vary significantly from the roof plane or that are ground mounted may be more noticeable and may need to be specifically addressed. With the federal and state incentives that encourage solar technology and the benefits that these distributive generation technologies have for encouraging jobs, the green economy, etc. – it seems prudent to address the deficiencies In the legislation and that the legislation may need to be more explicit in allowing solar collectors to be visible.

Record

Jayne Nelson (Rep. McGee)

From: Susan Henderson [susanlhenderson@gmail.com]

Sent: Sunday, January 31, 2010 4:49 PM

To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray

Cc: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee); James Laumann; Henderson, Ross; Henderson, Susan L.

Subject: House Select Committee on Homeowners Associations

Dear House Select Committee Members on Homeowners Associations -

My husband and I live in Florida and have a second home in North Carolina (Jackson County). I would very much like to attend and speak at the Select Committee on Homeowners Associations this week. However, distance and expense precludes my attending. I will, however, in this email share our personal experiences with regards to the governance, assessments and record keeping of our homeowners association.

We have a homeowners association (HOA) called "Catspaw Property Owners Association" that we try to participate in. When we purchased our land, we carefully read the covenants and bylaws. However, in the past four HOA meetings we have found the bylaws are not being followed.

For Example:
According to our association bylaws, we are supposed to vote for officers. However we are not given the opportunity to do so. The current board members "invite" other members to become part of the board. The officers are chosen by the board members. The same individuals rotate back and forth between President, Secretary and Treasurer. There are no terms of office. One board member said to me, "**The board has the right to make any decision that they want to if there is not a quorum at the annual meeting**". We never have a quorum at the annual meeting.

Assessments:
A 1993 amendment to the bylaws that is referenced in all our deeds says that a majority vote of the members (one vote per lot) is required to pass any increases in fees. In the past, when there was insufficient attendance at the annual meeting, homeowners were asked to vote by US-mail to achieve the majority vote of members, as required by the amended bylaws. This is no longer done. The Board of Directors now makes all decisions and informs the property owners of their decisions rather than take a vote which would have to be done by mail or the internet. The board has some self generated, non registered documents, which are not referenced in any of our deeds, that they say gives them this authority. **There is no recourse except to go to court which would be divisive for the community and very expensive.**

Record Keeping:
One property owner, Stephen Nelson, an attorney who has significant experience working with home owner associations in another state, questioned the board's authority based on the bylaws, to assess new fees without a membership vote. He also made a request to the President in writing for the complete records of the association. He was essentially stalled by the HOA officers who said that it would be an onerous burden upon the board to provide those records. He made repeated requests in writing to receive the HOA records. The HOA President informed him that it would be expensive to the association to provide those records and a lot of work. Mr. Nelson offered to pay for the records and to make them available for all other property owners electronically. Still, the association stalled. **Apparently, the HOA did not maintain complete, organized records.** He finally received the available records months after they were requested after much stress and duress from the HOA Officers.

Requested Action:
I would like to strongly encourage you to strengthen and protect the rights of property owners to participate in the governance of their HOA, particularly related to assessments and record keeping. The actions of the HOA should represent the property owners, not just the HOA Officers and Board. **Documentation for bank accounts, expenditures, meetings, and board of director meetings should be readily available for any property owner to**

access without a fight. With computers and the internet, there is no excuse for poor record keeping, poor access to records and even the opportunity to vote on assessments and issues could be done electronically.

Property owners need protection from a board taking authority that is not documented in a property deed.

Property owners need some recourse to appeal the wrong doing of an HOA board without the prohibitive cost of hiring an attorney and going to court

Thank you for your consideration of these issues. My husband and I would like to ensure participatory homeowner's associations. HOAs should be democratic, not dictatorial.
Please help through appropriate legislation. If we can assist in any way, please let us know.

Sincerely,

Susan L. Henderson

Ross P. Henderson

429 Catspaw Road
Cullowhee, NC 28723

US Mail to:
3124 Ortega Drive
Tallahassee, FL 32312

850-386-2330 (h)
850-591-4309 (c)

e-Mail:
susanlhenderson@gmail.com

Record

Jayne Nelson (Rep. McGee)

From: J. R. Hildreth [drumroll@charter.net]
Sent: Monday, February 01, 2010 9:51 AM
To: Rep. Jennifer Weiss; Rep. William C. McGee
Cc: Rep. Edgar Starnes
Subject: Public Hearing - NC House Select Committee on HOAs

Importance: High

Representatives Weiss and McGee:

While doing some research on HOAs in North Carolina I discovered that this Committee exists and that public hearings are being held to provide an opportunity for the NC public to comment. Please accept this as my comment.

Currently, NC GS 47F permits the declarant, i.e., the developer, of a planned community to retain control for an unlimited period of time although there is a requirement to state some period of declarant control in the master documents.

This is unlike many other state's statues which stipulate a discrete period of declarant control from the date of inception or first sale based on either time itself, eg. 7 years, or when a percentage of lots, home, units, etc. have been sold, eg. 60%, or both.

In any case, NC property owners who reside in developments covered by a HOA should have a time period specified for declarant control. I strongly recommend consideration of "no more than 10 years from date of the sale of the first lot, home, unit". I recommend adding clauses that provide for a graduated inclusion of representatives to the board of directors of the association by vote of the non-declarant owners based on either specified time periods or by percentage of elements sold, eg 1 board member after 10% of sales, 2 after 30% of sales, etc.

It would be helpful to have language similar to but stronger than NC GS 55A regarding the fiduciary responsibility of the declarant and the declarant appointed members of the board of directors during the period of declarant control.

Additionally, our current statue has no teeth or support in terms of State enforcement. There is no State agency that's responsible for supporting and assisting owners when there's an issue, conflict or for enforcing the legislation and its components. Owners are left only with the option of civil suit in the courts.
There is a serious need for a State agency to be assigned the responsibility for supporting and enforcing the current or revised statue.

I hope the above has reached you all in time for consideration.

I would appreciate knowing how to follow these public hearings and any legislation or changes to the current statue that might be proposed. Can you direct me?

Thanks and kindest regards,

J. R. Hildreth
147 Gunpowder View Circle
Granite Falls, NC 28630
828-212-0342

Jayne Nelson (Rep. McGee)

From: Janebjordan35@aol.com

Sent: Tuesday, February 02, 2010 1:48 PM

[redacted] Rep. Jennifer Weiss

Cc: Rep. William C. McGee; Rep. Beverly Earle; Rep. Julia Howard; Rep. Chris Heagarty; Rep. George Cleveland; Governor Office; edwin.speas@nc.gov

Subject: HELLO REPRESENTATIVE WEISS ! HOA MEETING RESULTS

02-02-10

Dear Representative Weiss, et.al,

Thank you for your prior communication with me. I could not ultimately make the open meeting today as I so wanted to attend or come to Raleigh at all. I will call you tomorrow and check up on things. I had an interview for a job that I really need and this went overtime this morning and then as I was leaving to come to Raleigh, a matter of state and nation came to me and my family as we are advocating for a man who is running for President of Haiti. I may end up flying down there myself with my family. My fibromyalgia will just have to be put on hold. I will be fine. I will copy this to Ms. Smith as well, who I am representing and our Governor, to keep them informed of your progress, as I am sure Governor Perdue is also interested in keeping homeowners in their homes and in their present jobs. I hope you read all of this because it is very important. I know you will and trust that justice, support and help to our citizens will come forth. And swiftly.

Please keep me informed as to whether this study commission's open meeting today ensued by the House of Representatives, did take my comments and talk about this, about allowing homeowner's to pay along as they can when they fail to pay their dues exactly on time, not realizing the process, going through duress in divorces, etc or loss of jobs, and especially when they are in distress. In other words, the laws of North Carolina should adequately protect the homeowners, if they are attempting to pay off any debts owed, to HOAs, as most people cannot afford these high and quite obviously ruthless attorney's fees. The laws can still be enforced to coerce compliance, if needed, but by reason not hysterical manipulation to make a buck off of someone unjustly. If after the homeowner starts making payments and communicates effectively with the [redacted] or management company, there should be no future huge charges added on time after time, like has happened to Ms. Smith and refusal by any HOA, management company or attorney, to accept what a person can pay. Attorneys are taking advantage and we all know this in this regard. So are HOAs. This would have been over long ago if such laws were in place already. She would have paid her HOA $903.00 charged when she tried to pay them $600.00 in January of 2008 and been done with it. this is much more stress on a human being than is necessary in their ability to function and keep the job they have. Now you know that this HOA, management company and attorney is charging her around $6,000.00 for an original debt of only $175.00 for one year or for any amount owed, and this is abusive as it can be. It is all centered off of what someone can "get" off of another person. This kind of activity has nothing whatsoever to do with justice or doing the "right moral thing."

Now Representative Weiss, I want to thank you personally for supplyng Ms. Smith with the North Carolina Department of Justice referral in Mr. Riley who did call her, but she does not qualify for legal aid on her yearly salary. He has not called her back, so could we still get some sliding scale low, low priced attorneys to look into this ? Do you know of any ? I am going to fight for this law to be added in North Carolina to include paying along as one can. It is reasonable and just. Also, for me to receive such threatening letters, from both my HOA board and the association attorney, which made me royally lose my temper, from the same attorney's law firm as Ms. Smith, when I had done nothing wrong, but originally bring to light to the community in which I live, unparliamentary procedure on breech of a quorum vote for only $54,900.00 for a special assessment in 2005 when the President of our HOA at Elizabeth Townes went over her own entire board's head even after this and solely signed a contract for $77,129.00, most likely hiring illegal immigrants, paid under the table, as I live here and talked to them, with this attorney's knowledge, then we just cannot have this. We see the writing on the wall. Embezzlement abounds and will continue in such non profits unless safe guard laws are put into place. Let me know your thoughts.

I look forward to hearing from you.

Sincerely,

Jane Brawley Jordan
Political Activist
[redacted]0 Elizabeth Townes Lane
Charlotte, North Carolina 28277
704-341-4293

Johnson Farms + Treetops

Board

Jayne Nelson (Rep. McGee)

From: Marie [Marie---@ec.rr.com]
Sent: Tuesday, February 02, 2010 1:04 AM
Susan Doty (Rep. Weiss); Rep. William C. McGee; Rep. George Cleveland
Subject: North Carolina House Select Committee on Homeowners Associations
Attachments: Letter to the LAJF BOARD members01-18-10.doc; Laura-Jan19-2010.doc; Marie-Pam-final.doc

Dear Ms Weiss, Mr. McGee and Mr Cleveland,

Just tonight I' ve received the information that there is a House select committee in NC dealing with HOA problems . I submitted a short summary but I want to draw our problem to your attention as well. I also attach a letter that our community petitioned 3 broad member also signed, but the HOA president didn't allow to discuss the matter and there are still residents in our community who are ignorant about these serious issues. I found nobody who would represent New Hanover county so I sent a letter to everybody.

I've just received this information about this series of meetings. I do hope you will pay attention to the coastal areas as well – we need your attention!

<!--[if !supportEmptyParas]--><!--[endif]-->

For example, in our community (called LAJF), we experienced serious problems from its conception of our HOA, and I would appreciate info and help.

<!--[if !supportEmptyParas]-->

Residents in our community are never informed, the annual meetings never give allowances under new business to discuss any problems and no rules are ever observed. I, as a member of the residents before, or member of the board now, tried to speak up, but no free exchange of ideas is allowed.

Annual meeting attendance is under 10 persons out of 144 single-family homes, because residents do not feel that the BOARD does anything for them, except sends out violation notices even in trivial issues. Meeting rules are not observed at annual meetings.

<!--[if !supportEmptyParas]-->

Right now the developer wants the violate the covenant and built several huge rental buildings dispersed in an area where only single family homes were allowed, some rentals probably will be built on dedicated wetland areas. Meanwhile the same developer still did not address storm water and drainage issues in 14 years - and I was not allowed to inform the residents about these pertinent issues on the Annual Meeting last week, nor were these important issues included/attached under new business in the report sent to the residents calling for Annual Meeting as I requested at several board meetings in the summer and fall. In the Lakes even pseudo-democracy ceased to exist.

Sometimes I wonder if I live in the United States or in North Korea.

<!--[if !supportEmptyParas]--> Respectfully,<!--[endif]-->

Maria Lonyai

02/02/2010

Member of the Board,

The Lakes at Johnson Farms, Wilmington, North Carolina

P.S. It seems that the City council had more common sense and having received the letter postponed the decision and n[redacted]equest certain changes - but our president still did not think that we should have acted or discussed this issue with the very residents who would be very much effected by all these developments and of many signed the petition in case they knew about the plans. But there are residents who are still ignorant because the HOA President decided not to inform them.

02/02/2010

Dear Board Members and Laura,

I read through the letter, called "Notice of Annual Meeting" sent out to the HOA members for the annual meeting on this coming Thursday, and I found that something was missing in the "New Business" section. Notably the issue about the voluntary annexation and more importantly the hostile takeover planned by South College Associates. This takeover as you all know involves building 3 story high rental units inserted into single our family residential neighborhood.

As you all know I opposed this plan from the very beginning and several times I requested that this issue should be a topic in the upcoming annual HOA meeting. Some board members agreed with me, but nobody, not one single person ever said that it wasn't a good idea to discuss this issue with the interested parties, namely, the residents. Even less was I told that it will not be done and the residents would not be notified.

If some Board members, working for the city, feel or felt that it would be a conflict of interest to fight for our community against the City Council if it comes to it, they could and should excuse themselves from participating in these proceedings. That is fair and an acceptable step and it is far much better than being thought later on or by outsiders that they were silent because they were agents of South College Associates as some former Board members were accused to be, rightly or wrongly, that's beside the point right now.

There is one thing that cannot be and should not be done by this Board: to keep the residents intentionally in the dark, try to eradicate this issue by silence. Had you seen what happened here after hurricane Flojd due to the lack of drainage easements that are still not built by South College Associates, you would not be so complacent as to what will happen to this area if several high rental buildings will be placed over us. The Lakes is the most vulnerable in this respect, ask anybody who has an engineering degree and honest enough to tell you what is going on.

Nonetheless, our community, like the others in the area deserves advice and information from its Board. In particular, when South College Associates is involved who disregarded so many legal and other regulations in the past and could endanger both property values and human lives in the future both in our community and in the others. Having listened to the city Council Proceedings of January 5, it seemed to me, that the Mayor and a few members of the council had serious problems with the plan submitted by South College Associates and they were not even aware of the entire story. Meanwhile our Board wasn't there or remained silent. A second reading is scheduled for Tuesday, January 19th.

Pamela King, the HOA President of Cambridge Heights worked a lot on a letter and collected all supporting materials relevant to the history of this case. I tried to help her as much as I could. She hand-delivered the letter (I send you in attachment) to the Mayor and the members of the City Council in the name of all these communities on Friday, January 15.

I would like to inform you, in case you don't not know that she collected a lot of signatures from the Johnson Farms area and those will be submitted as attachment to the City Council before the second reading tomorrow. **I also signed this petition.** Rest assured, I was not alone from the Lakes who signed this petition.

I suggest, or rather request, that CEPCO should make enough copies of the attached letter for those who are interested to read it. If delivering it to every resident is impossible (I am sure, actually, I know that it is not impossible and that would ensure that more homeowners would attend the meeting - as we discussed it in the summer and again in the fall Board meetings), have copies available when people enter the room. And, please, add this subject to "new business" because this is one of the most important businesses what we should discuss. I am hoping there will be time allowed for people to express their concern in case they want to do it.

The Board should not appear as a body that dodges vital issues impacting our community and relish only sending out violation notices.

Best wishes,

Marie

Laura,

If you read my letter of yesterday you find all pertinent information in it regarding your question who wrote the letter in question.

As to the issue of authorization, or lack thereof, as I recall the LAJF BOARD had no opinion or decision in this matter. I requested several times on various BOARD meetings to discuss this issue with the residents on the upcoming annual meeting, and as I wrote yesterday, some members agreed, some remained silent **but not one board member said "no"**, consequently the authorization issue cannot even be raised reasonably.

The issue of authorization is moot and void anyway, because the letter is submitted in the name of the "citizens" of these communities, and despite the LAJF BOARD inactivity, opposition or even antagonism to help, many of our residents signed the petitions as I was informed about this fact last night.

The last time I checked, we are free citizens of the USA, not subjects of North Korea, so people can sign a petition any time they agree with it. This freedom is a basic right guaranteed in our constitution – let it be state or federal.

Of course, our Board would appear in much better light if we could show our residents that we were and are willing to lead, to discuss these problems with them and are aware of the problems coming.

It is dangerously naïve to think that these developments would not effect us, because if the drainage issues are no fixed, storm water problems are not resolved prior to any new housing development, even worse, huge rental units are going to built further up, the Lakes will suffer the most if a major hurricane hits us again. Ask for a review from the U. S. Army Corp of Engineers before you further neglect this very dire situation.

You wrote: **"Any communication going to the City regarding any of the proposed development should be discussed by the entire LAJF BOD before it is distributed because some of the members may not have the same views as other members."**

When, may I ask? We could have done it during the summer or in the fall meetings – I did raise this issue both times. Waiting any longer just won't do. The previous Boards waited till Still Meadows became a fact and Arbor was built on our stolen property and illegally ditched wetland. How long does this Board intend to wait? Till the there is a fait a compli and nothing can be done or changed?

It is irresponsible not to put this issue on the agenda of the Annual Board meeting. I intend to ask for a few minutes to speak and I hope neither the other members of Board or you will deny me the possibility to open my mouth. If another resident will raise the issue I will not speak.

Best wishes,

Marie

January 15, 2010

Mr. William Saffo, Mayor
Dr. Earl Sheridan, Mayor Pro-Tem
Mr. Kevin O'Grady
Ms. Laura Padgett
Mr. Charles Rivenbark
Mr. Ronald Sparks
Ms. Kristi Tomey

Hand Delivered

Dear Mr. Mayor and City Council Members,

On April 21, 2009, City Council accepted the voluntary annexation request from South College Associates and the Silver Lake Baptist Church to build 288 apartments on 28.21 acres of vacant real properties located at 4811, 4723 Carolina Beach Road and 4800 Split Rail Drive, without any notification to the residents at The Lakes at Johnson Farms, Cambridge Heights, Belle Meade Plantation, The Arbors, Johnson Farms, Henderson Park and Treetops all of whose residents will become new citizens of the City of Wilmington on June 30, 2010 and all of them will be negatively impacted by this decision. The first time the Johnson Farms and Treetops communities were notified that their collective lives were about to be negatively changed was by Public Notice signs posted at the edge of the above mentioned properties and if one were unfortunate enough to live within a 100 feet of the disputed properties, one received a letter informing him of a Subdivision Review Board meeting on July 15, 2009 at 1:30 pm.

From that first meeting, the citizens of Johnson Farms and Treetops made it very clear to the Subdivision Review Board, the Planning Commission and City Council that they strongly opposed this project. The original Master Site Plans dated 1988, 1990 and 1996 show the Johnson Farms subdivision to be comprised **entirely** of single-family houses (See attached Site Plans). On September 1, 1996, New Hanover County added the requirement of a Special Use Permit for all new high-density land use projects, such as apartments. South College Associates asked for and was granted an exception from the Special Use Permit, by the County Commissioners, for the Still Meadows Apartments. Had this exception not been granted, Still Meadows most likely would not have been built, because it failed the first, third and fourth tests of the Special Use Permit:

- **(1) that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved** (Cars from Still Meadows speed, even before DOT assigned a 35 mph speed limit, through the narrow streets of The Lakes at Johnson Farms to exit on to Carolina Beach Road endangering our children. Additionally, there was discussion of insufficient sewerage capacity evidenced by the attached correspondence between the County and South College Associates.)
- **(3) that the use will not substantially injure the value of the adjoining or abutting property, or that the use is a public necessity** (as a matter of fact, the houses near Still Meadows continue to endure depressed property values), **and**
- **(4) that the location and character of the use if developed according to the plan submitted and approved will be in HARMONY with the area in which it is to be located and in general conformity with the plan of development for New Hanover County** (Is it HARMONEOUS to have three story apartment buildings towering over single family houses?).

In addition to failing these tests, South College Associate violated the Lakes at Johnson Farms Home Owners Association Covenants **ARTICLE X., ANNEXATION OF ADDITIONAL PROPERTIES, SECTION 2.** – written **by South College Associates:**

"***If the Declarant, its successors or assigns, shall develop all of any lands adjoining the Properties, as additional tract of any portion thereof may be annexed to said Properties without the assent of the member; provide, however, the annexation of the Additional Properties as additional phases of THE LAKES AT JOHNSON FARM permits only single-family dwellings. Annexation provided for in this Section shall become effective upon the filing by the Declarant of a Supplemental of Amended Declaration in the office of the Register of Deeds of New Hanover County.***" (See attached HOA covenants and letter from Wessell & Raney, L.L.P.)

The 03/04/05 Accepted Revised Master Site Plan for the Johnson Farms subdivision showing the inclusion of Henderson Park states there shall be **38.31 acres of OPEN SPACE and lists the 28.21 acres now being discussed as WETLANDS and part of the OPEN SPACE.** In 2009, City Council accepted the voluntary annexation request for another parcel, owned by South College Associates, within the Johnson Farms subdivision, and approved the addition of 144 apartments to Still Meadows and 62 very small single-family houses to be built on **additional WETLANDS OPEN SPACE provided by the '05 site plan.** Has a New Master Site Plan for Johnson Farms been created to show where the **38.31 acres of OPEN SPACE are now located?** South College Associates and now Silver Lake Baptist Church are once again avoiding New Hanover County's Special Use Permit for this type of high-density development. **Hayleigh Village, the expansion of Still Meadows and the 62 undersized single-family houses would have most likely failed all the requirements of the County's Special Use Permit.**

When South College Associates built The Lakes at Johnson Farms subdivision they did not put in sidewalks or provide space for playgrounds. Neither did Town & Country Developers at Wilmington or Mr. Pigford who built the Cambridge Heights and The Arbors subdivisions respectively. Consequently our children have to walk and play in the streets. Although the roads in the Johnson Farms Subdivisions are classed as Public Access Roads, they were built as local roads, not collector roads, and never were intended to handle the wear and tear of **679+**cars from Hayleigh Village and **412+**cars from the Still Meadows expansion and 62 single-family homes. Most of the streets are narrow and no overnight parking is allowed in order to keep the streets clear for emergency vehicles. Adding **1000+** cars on our narrow roads combined with the posted 35 mph speed limit is a disaster waiting to happen. **The Site Plan** is disingenuous to suggest that only a few of the **1000+** cars will travel through our neighborhoods.

On October 7, 2009, South College Associates and Silver Lake Baptist Church withdrew their zoning application after the builder, CIP, withdrew from the project. If Hayleigh Village was such a great plan, one must ask why CIP withdrew. Perhaps CIP conducted its own research and concluded there was no market for its product.

If Council Members should travel south on Carolina Beach Road from City Council Chambers they would pass by the skeletons of commercial and housing developments that have denuded acres of land only to lay fallow. (If Hayleigh Village were approved, when would the 434 trees be stripped away?) The housing developments that are building again are doing so with asking prices $30,000 to $60,000 lower than their initial asking price. Belle Meade Plantation's builder is in **bankruptcy** with 5 houses that have never been occupied (two of these homes won prestigious building awards). It appears BB&T may have withdrawn its financing from Mr. Digioia's project on Matteo Drive; the BB&T sign has been removed from the site. Mr. Digioia

has talked about the pending contract to purchase the Lawson land necessary to connect Sikes Drive to Pineview Drive since the first Subdivision Review Board meeting on July 15, 2009. (If you review the January 5th recording of the City Council meeting, Mr. Digioia talks about the **still pending** purchase of the Lawson property.) In the Johnson Farms' vicinity, there are already seven apartment complexes and one townhouse community providing approximately 2300 rental units. The Keys apartment on Hearthside is offering 1-month free rent for a 13-month lease. Sea Pines, Tesla and **Still Meadows** are all offering reduced rental incentives. (Does **Still Meadows** really need another144 units? Where will the employment opportunities come from to attract all the new tenants?) Adding to the glut of existing rental space, 30% of the Gardens Condominium is being offered as rental. Or, perhaps CIP performed soil testing and realized the cost to prepare the land for building would require a very long period of time to recover it? Has Council asked the question why did CIP withdraw?

Storm Water runoff and drainage is a constant concern throughout our existing neighborhoods which appear to be impacted by the proposed 'Hayleigh Village'. Historically speaking, the current subdivisions, as well as the proposed location, were classified **404 Jurisdictional Wetlands by the U. S. Army Corp of Engineers in 1996**. A portion of what is now, "The Arbors" was illegally drained by a practice known as 'ditching' by South College Associates. In the late 1990's the State of North Carolina put a stop to this practice and the developer, **South College Associates,** had to make restitution to the State through mitigation. This organizational group, The Lakes, The Arbors, Cambridge Heights, Johnson Farms and Treetops, has taken the initiative of comparing all public documents related to the proposed development, and while all may appear to seem normal on paper, the 404 wetlands boundary delineations are not depicted on the Heyleigh Village preliminary plan dated 08/10/09. There is a defined wetlands boundary, post construction. But a realistic view of the proposed area is not an 'apple to apples' result and if the applicant were to construct these structures, as proposed, one would have the belief that a thorough study of the 404 Jurisdictional Wetlands was reviewed by the Corp of Engineers. Thereby, such a review should be readily available which insures all impacted parties of potential, or negative drainage impacts which can be a result of a natural disaster, e.g. hurricanes and large downpours. In addition, it is an absolute fact that any deviation, adjustment, or proposed impact to such boundaries has to be reviewed by the Corp of Engineers and while we understand that much of New Hanover County has wetlands boundaries, the proposed plan clearly impacts these established boundaries and each potential adjustment to a defined wetland area must have legal documentation assigned to it whether it is for the proposed Multi-family Medium Density or any substitute plan. Has staff read the Army Corp of Engineers report concerning this land? Where is the location of the land that was offered as restitution for the mitigation?

To date, **South College Associates** has not fulfilled its obligation to rectify the drainage issues in The Lakes subdivision. Can we really trust they will be held accountable for correcting and containing the potential water issues that are sure to arise with the construction of Hayleigh Village? The Current Master Site Plan for Johnson Farms subdivision shows a 30 to 50 foot drainage easement around most of its perimeter except behind the properties abutting the disputed properties. (See attached copies of various site plans for the different neighborhoods that designate lots as DO NOT BUILD and they did.) Could it be the drainage easements were not built because they would have invaded protected 404 wetlands or because by the very nature of a swamp, the land does not drain? The Hayleigh Village Site Plan states that pervious pavement will be used for the additional parking spaces over the necessary 679 spaces. Pervious pavement when built upon optimal soils, at its best, can absorb 1 inch of gentle rain over the period of a day. Our rains are rarely gentle.

At the January 5, 2010 City Council meeting, Council acknowledged it made its decision to accept this voluntary annexation **without looking at a comprehensive plan and consideration of the impact on the neighboring communities** and now feels that there is tacit agreement to accept whatever **"Plan" South College Associates and Silver Lake Baptist Church** presents in order not to discourage other future projects that may want to annex voluntarily. Council mentioned regrets about another apartment complex approval years ago and said they grimace every time they pass by the complex and wishes it had never been built. Here is a golden opportunity **not** to repeat history. Earlier in the evening, Council accepted the Greenville Loop development that has 20 single-family houses and 120 townhomes as **transition to the** 80,000 square feet of office/retail space. Townhouses (MF-Low Density) would be the more logical and aesthetically pleasing **transition** from the single family housing of the Cambridge Heights, The Lakes at Johnson Farms and Treetops subdivisions.

The Johnson Farms and Treetops communities have had no say in the fate about to be foisted upon them of forced annexation and if the City Council accepts this plan, it is making it very clear that City Council does not care about tax paying citizens. All the public hearings we have attended will have become a meaningless exercise in pseudo-democracy and it might appear that only developers who can make enhancements to the City's infrastructure matter. Council Members need only to look around within the State of Florida to learn what happens to communities when they rely solely on developers to "improve" infrastructure.

Our request is that City Council will zone the properties located 4811, 4723 Carolina Beach Road and 4800 Split Rail Drive, if not to our preference of R-10 single family housing consistent with the existing neighborhood, then MF-Low Density with a plan for townhouses, not 280 apartments. Council Members are charged with the responsibility and duty to represent **all** of your citizens (including future citizens). Council Members you possess the power to grant our request.

Respectfully,

The Citizens of Johnson Farms and Treetops

Enclosures

Record

Jayne Nelson (Rep. McGee)

From: THOMAS KELEHER [tjkeleher@msn.com]

Sent: Wednesday, January 27, 2010 10:40 AM

Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray

Subject: Thoughts on HOA

January 26, 2010

Dear Representative:

I am writing you today to give you a positive perspective on Homeowners Associations.

I am on the Board of Directors for Biltmore Lake HOA. This is my fourth year on the Board so I felt that you might be interested in my perspective. First, let me acknowledge that all HOAs are not alike. I am certain that there are some that take advantage of their position. However, I sincerely feel that is the exception and not the rule.

The Board and committee members of our Association are dedicated to keeping our Community a positive area to live and to raise children. The Finance Committee alerts us as to expenditures and reserves. Our Post Design Construction Review Committee makes certain that any new additions comply with the architectural ambiance of the entire community. The Social and Recreation Committee offers multiple events throughout the year ranging from childrens activities, lectures, welcoming new residents, holiday picnics, games at the clubhouse, to a chili cook off for the local fire department. Our Lake and Trails Committee monitors the integrity of our lovely lake and its surrounding trails. They look for things that may be hazardous to our residents and make recommendations to keep the lake a recreational treasure. Without these committees, and the tremendous amount of volunteer work that they do, our community would not have been the Association of the Year for 2009.

I can also tell you, first hand, that there are those people in communities that are never, and will never, be satisfied with anything that an association does. It is discouraging to listen to their warped logic about running a community. These are the same people that dont volunteer, dont vote, find fault with everything, and then claim that the association, board, or management company, is horrible.

A well run association is what makes a good community an excellent community. To limit the HOAs ability to balance the needs of all the community members because some take advantage of the system, would be like saying that we should abolish democracy because some legislators are unethical. Unfortunately, we have to take the bad with the good until we can vote them out. If there needs to be change in an association, the residents that want the change will have to initiate it and not mandate it to those who are happy with the system.

Rather than further limiting HOAs, might I suggest that a professional standard be developed for management companies? Oftentimes, people with little or no experience, set themselves up as property managers. With no oversight and no professional standards, they can abuse the HOAs resident members or not take their fiduciary duties seriously. Isnt it time that an industry, which represents thousands of people, have a definable set of standards and governances?

Thank you for taking the time to read this letter. I was hoping to go to Raleigh to speak with you in person, but a broken foot would make that trip less than desirable. However, I would be happy to discuss this further if need be. Thank you for the time that YOU spend to serve your legislative area. I know that you are a committed public servant just like I am.

Sincerely,
Carol Ann Keleher

01/29/2010

Jayne Nelson (Rep. McGee) Record

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01, 2010 1:15 PM
To: 'David M. Knauss'; Jayne Nelson (Rep. McGee)
Subject: RE: Comments for North Carolina House Select Committee on Homeowners Associations

Dear Mr. Knauss:

I have printed your comments for consideration by the committee members. Thank you for sending them, the format printed perfectly.

Susan Doty

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: David M. Knauss [mailto:dmknauss@rochester.rr.com]
Sent: Monday, February 01, 2010 10:37 AM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Subject: Comments for North Carolina House Select Committee on Homeowners Associations

Ms Doty and Ms Nelson,

I am not able to attend the North Carolina House Select Committee on Homeowners Associations Hearing on February 2, 2010, but I would like to submit the attached comments for inclusion in the Committee's considerations.

A word document is attached, please let me know if that format is acceptable.

Thank you,

David M. Knauss
585-975-9105

Dear Committee Members,

Thank you for the opportunity to comment on the issues related to the protection and participation of homeowners in the governance of their homeowners associations.

The most important action that the General Assembly can do to assist homeowners associations is the passage of the 'North Carolina Community Association Managers Licensure Act'. The most difficult problem that associations face is the hiring or appointment of custodians to manage our property. Many problems in homeowners associations are the result of incompetent or untrustworthy managers that gain the confidence of the hiring committee. Without standards of competence and performance, inexperienced hiring committees often make poor decisions that are later revealed in assessments and fee increases due to incompetent property management. At its worse, this lack of clearly defined standards and performance results in many opportunities for malfeasance and corruption. The passage of this act is vitally important to help associations raise the level of management competence and raise the confidence in hiring decisions. Thank you for your continued support of this important legislation.

The major issue facing association owners is enforcement of the existing statutes governing the behaviors of the association management. When association bylaws or state laws (55a, 47a, and 47c) are violated and management refuses to comply, the only recourse available to owners is costly retention of an attorney to mount a legal challenge to the behavior. This is self defeating since the owners pay all legal fees for both the challenge and the defense through their HOA fees. Several examples of potential violations of bylaws are:

1. Denying access to records by invalidating the stated purpose of a request for records.
2. Violating procedural bylaws for the proposing and approval of annual budgets by denying the owner meeting as called for in the bylaw.
3. A by-mail budget approval voting process that violates Roberts Rules because "no ballot returned" was counted as a "vote to approve the budget" instead of an absentee.
4. The association borrowed $400,000 when the bylaws limit unapproved borrowing to $50,000.

In each of the above instances, owner's inquiries and challenges were simply ignored by the Board of Directors with no response or actions. The owners are powerless to move beyond this point without hiring an attorney. The association's attorney and CPA are directed by the Board not to respond to owner's inquiries by invoking client confidentiality.

Homeowners require a practical means of preliminary challenge and enforcement of the law without the expense of engaging an attorney. A practical approach may be an advocate within the North Carolina Attorney General Office that could provide assistance to owners either as a mediator or an expert source of interpretation of the law. The primary focus of the Committee should be on enforcement of existing law and the protection of owner's rights.

Thank you,

David M. Knauss
1194 Gatestone Circle
Webster, NY 14580

Ocean Dunes Homeowners Association
Kure Beach, North Carolina

Record

Jayne Nelson (Rep. McGee)

From: Nancy J. Kurul [nancy@nkurul.com]

Sent: Monday, February 01, 2010 1:35 PM

To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray

Subject: Nancy Kurul's Comments for North Carolina House Select Committee on Homeowners Associations

Attachments: N Kurul NC House Public Hearing Info.doc

Attached please find my comments relating to the public hearing on Homeowners Associations Tuesday, February 2, 2010.

Please feel free to call upon me should you need any volunteer assistance or further information.

Thank you for your efforts on behalf of the citizens of North Carolina.

All my best,

Nancy Kurul

February 1, 2010

To Whom It May Concern:

Thank you for this opportunity to address issues related to the governance of homeowners associations, particularly as to it relates to assessments and record keeping. In addition to Manager licensing, I hope you are able to address difficulties associated with Developer management of HOAs and an orderly Developer-Homeowner Transition.

I live in the Oak Ridge sub-development of Grand Oaks in Pender County, NC. I served for little over a year as the Secretary for the Oak Ridge Homeowners Association. As part of the first elected HOA board, I was involved in the transition from Developer control to lot owner control of our sub-development HOA. The inadequate record keeping and poor budgeting and assessment processes continue to lead to serious problems for our development.

Some background may be helpful to address:

CLOSING

We purchased Lot #8 in the Oak Ridge sub-development on 7/3/2007. Prior to closing we were supplied **Covenants, Conditions and Restrictions** (hereinafter referred to as CCRs) by the Declarant's real estate agent.. [1] These were forwarded to our closing attorney for review. Unfortunately these were not the CCRs attached to our sub-development, but rather those attached to another sub-development in Grand Oaks. All of the Oak Ridge lot owners received either incorrect CCRs or no CCRs whatsoever.

To date we have not received the required **Street Disclosure Statement**, which would have informed us prior to closing that the streets are private and were built below current Department of Transportation standards.

Monies collected for **capital reserve funds** at closing were $100 more than those specified in the Oak Ridge CCRs. Attempts to verify that reserve funds have not been co-mingled with operating expenses have gone unanswered. Since we now know that we will be responsible for maintenance of roads built long before the development itself, verification

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[1] Grand Oaks Development Company, LLC, hereinafter referred to as the Declarant or Developer, was incorporated on 5/16/2000.
Oak Ridge at Grand Oaks Homeowners Association was incorporated 6/6/2000.
The Pender County Subdivision Ordinance was adopted on 3/15/2004.
Pine Village at Grand Oaks Homeowners Association was incorporated 4/21/2004.
Grand Oaks Homeowners Association (hereinafter referred to as the Master Association) was incorporated 4/14/2004.

of the continued existence of these funds is essential to long-term planning. No reserve study has ever been conducted to our knowledge.

DEVELOPER/HOMEOWNER TRANSITION

It was during the November 2007 transition from Declarant Control of the Oak Ridge HOA to a homeowner-elected HOA board that we realized the extent of the poor record keeping and budgetary practices. It took numerous certified mail requests to obtain the correct CCRs, By-laws, and bank account records for the Oak Ridge HOA. It was not until then that we realized a Master Association even existed. The Master Association CCRs informed us that the Declarant Control Period for the Master Association would continue as long as the Declarant, its successors or assigns, own any property in the Grand Oaks Development. This means the lot owners do not, and will not for the foreseeable future, have any vote on budgets or representation on the Architectural Committee.

The current Grand Oaks Board of Directors consists of the Declarant and his two adult children who own unimproved lots in the Oak Ridge Development. The Declarant owns a home in the Oak Ridge sub-development, but excluded his home from the Development plat; his property is not subject to sub-development dues or requirements to comply with the sub-development's CCRs.

BUDGET/RECORDKEEPING ENFORCEMENT

The Grand Oaks Board does not supply lot owners with a proposed budget until July at earliest for that fiscal year, if a budget is supplied at all. Lot owners do not have voting rights on the Master Association budget. The annual assessments have risen dramatically since the transition to homeowner control of the sub-developments and include such items as a conference calling system for the Declarant to meet with the other Master Association Board Members (his two adult children).

Upon discovering a myriad of other irregularities in record keeping, deeds and contracts[2], etc., I attempted to discover what remedies were available to lot owners. I consulted the Pender County Board of Commissioners and the Pender County Planning Board, reviewed the North Carolina Planed Community Act, the Pender County Subdivision Ordinance and a host of other resources. I contacted my Representatives and the Attorney General's Office.

As a lot owner in this development it seems I have no option other than to sue the association and/or the offending property owners in court for an order compelling them to abide by all lawful covenants and bylaws. Please help us, and please supply some "teeth" to whatever you do.

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[2] For example, a contract made by Grand Oak Board President to the Grand Oaks Development Company, LLC for maintenance of supposed common elements property still owned by Elloyd E. McIntire, Sr. The common elements were not deeded to the Grand Oaks Development until January 2008

Should you have any questions or concerns or need any homeowner volunteer assistance, please do not hesitate to contact me.

All my best,

Nancy J. Kurul

Nancy J. Kurul
431 Pine Village Dr.
Rocky Point, NC 28457
910-602-6126
nancy@nkurul.com

Record

Jayne Nelson (Rep. McGee)

From: jonl9@suddenlink.net
Sent: Saturday, January 30, 2010 11:25 AM
[redacted] Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Subject: The House Select Committee on Homeowners Associations

Dear Ms. Doty, Ms. Nelson,

Your help in getting my note before the Select Committee currently holding public hearings on Homeowners Associations would be most appreciated.

I have served on Home Owners Association Boards of Directors in two states, in California as board treasurer and most recently in North Carolina as board president. California at that time had some 92,000 Home Owners Associations and from experience had grown a body of law to deal with Common Interest issues. The main piece of legislation was and continues to be evolving as the Davis Sterling act which outlined the responsibilities and liabilities of a Home Owners Association Board of Directors and in doing so provided protection in many areas for the property owners of that Association from negligent or even malicious acts of a majority on a Home Owners Association or Common Interest Development Board of Directors.

I recognize no such definitive and protective legislation here in North Carolina which could help avoid expensive litigation.

It appears to me that the only recourse a member of a Home Owners Association has is litigation on virtually [redacted]sues. I would suggest a more orderly approach should evolve in North Carolina statute defining clearly the obligations and liabilities of a Board of Directors thus providing protection for the member of the Board, but also providing a clear path of resolution for members of the Home Owners Association before the only recourse of resolution is litigation. The concern also exists that Judges may not be familiar with Common Interest case history as opposed to clear statute and there is no assurance a full weighting of the issues can be obtained.

I believe a climate that enforces liability even at the expense of the negligent or malicious Board member would help to prevent issues.

I recommend the select committee should acquire experience from other states such as California and learn from their experience while evaluating legislation here in North Carolina.

Covenant violations are civil violations, the state's Attorney General does not appear to have responsibility to resolve these issues. I would recommend that North Carolina define a place of review or mediation of civil issues regarding Home Owners Association Boards and the Association members before litigation becomes the expensive solution of last resort.

We have issues here in our community including a created and defined $1,290,000 liability. Two past presidents of this Association and a number of Association Members retained a lawyer, Mr. Henry Jones, who I am sure is known to the Select Committee. He helped us understand that this community has problems of liability from negligent attention to the provisions of the Covenants (Declaration) and the only path to get the issue on a path of [redacted]ution is very expensive litigation. Our group offered, at Mr. Jones suggestion, to pay the costs of a mediator on the issues, the board ignored the issue. The financials around the problem continue to deteriorate in the year since we've seen Mr. Jones; means of defining and recommending resolution should be available before a court

has to make a decision.

North Carolina is blessed in many ways. Located in the transition zone between temperate and and sub tropical climate zones, located between the the magnificent mountains in the west of this state and matchless coast in the east, Common Interest Developments offering common amenities here should be a natural hold for North Carolina residents and a draw for retired people who come with their pensions, assets and health insurance. All adds to the local tax bases, all use local restaurants and other businesses injecting cash flow into local and state economies. Beaufort County has benefited from all of this from the several Common Interest Developments here.

North Carolina should strive to be the ideal destination and residence for those wishing to benefit from Common Interest Developments. If the state gets a reputation for badly run Common Interest developments, then the benefits will flow elsewhere.

Respectfully,

Jon Larson
103 Neuse Drive
Chocowinity, NC 27817

(252) 940-0222

Record

Jayne Nelson (Rep. McGee)

From: Rich Marshall [rcmarshall@suddenlink.net]
Sent: Monday, February 01, 2010 2:55 PM
Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Cc: diana_starling_60@yahoo.com
Subject: Statement for House Select Committee Public Hearing
Attachments: Letter to House Select Committee.doc

Attn: Susan Doty
Jayne Nelson

re: House Select Committee on Homeowners Associations Public Hearing

The attached document is a written statement which we request to be entered into the public record at the Select Committee's hearing being held on February 2, 2010 at 2p.m. We will not be present to offer an oral presentation.

Please convey our appreciation to Representatives Weiss and McGee for holding these hearings. We look forward to the introduction of corrective legislation that will restore a balance of control between North Carolina Property Owners and their Homeowners Association's Board of Directors.

Respectfully submitted,

Tom Cherney, Rich Marshall, Mandi Johnson, Tony Morello, Pat Byrne, Rich Edwards.
Members of FHPORT, Inc (Fairfield Harbour Property Owners Reform Team) and
Members of the Fairfield Harbour Property Owners Association

Date: February 1, 2010.

To: House Select Committee on Homeowners Associations.
Representative Jennifer Weiss
Representative William McGee

Cc: Diana Starling

From: Members of the Fairfield Harbour Property Owners Association.
1822-6 South Glenburnie Road, PMB #222
New Bern NC 28562

Dear Committee Members,

We are members of the Fairfield Harbour Property Owners Association in New Bern, North Carolina. Our community was established in 1972 and now has approximately 2825 members. We are a community with both retired and working families. Our Property Owners Association is a Non Profit Corporation operated by seven (7) Board members.

Over the last five (5) years our Property Owners Association Board of Directors (POABOD) has been under the control of a group of intervidiuals that are out to change our community. They have made rules and regulations on their own authority and have refused the membership the opportunity to expand their voting rights. They have created documents that charge fees and impose rules that do not appear in our Declarations of Restrictions to accomplish their agenda. They ignore the bylaws and the Declaration of Restrictions because they get in the way of doing things. The following is part of a legal letter the POABOD received: "Most Board of Directors of most Associations are given the authority to adopt rules, regulations and guidelines by statute (47F-3-102 (1)) or by specific provisions in bylaws or restrictive covenant. The Board at Fairfield Harbour has no such general rule making authority."

The POABOD and Property Control Committee (PCC) have expanded our three page Declaration of Restriction section on building requirements into a fifty (50) page builder's application. This application dictates that the builder must do what the PCC requires, but if a builder is sued due to following their rules, the POABOD and PCC are to be held harmless. The application imposes a road maintenance fee, which is not mentioned in our Declaration of Restrictions. The Road fee has increased 100% over the last 5 years.

In 2009 the entire PCC resigned under what was a power struggle between the POABOD and the coequal PCC. The POABOD presented a "Document of Understanding" to the PCC. The PCC rejected the "document", and resigned stating that it shredded the Declaration of Restrictions.

In 2005 our Board presented a Declaration of Restriction change to restrict Boats, Trailers and RV's from being kept in residential yards. Following what was a very close vote, the communities billboard results changed over night, that put suspect on the results. It took over 3 years to get the votes recounted because the POABOD refused access to them. Only under threat by legal council to litigate the matter was ballot access finally permitted. A review of the ballots disclosed that the late votes were counted in the totals. A letter to the POABOD outlined these results along with documentation. The reply by the POABOD stated that "late does not have to mean late". The POABOD minutes also reflect that the ballot box was opened to " see how the vote was going".

The Annual Meeting held in May of 2009 was the first occasion that sign in sheets were provided to establish a quorum. We believe that the only reason this initial establishment of a Quorum occurred was that our group demanded to present a petition to the POABOD at the meeting. The POABOD has always been required to establish the quorum prior to installing new directors. We could have challenged the sitting board members because they had never been properly installed.

No one knew what a proxy was for and none were ever sent out. One half of our membership does not live in our development and many are out of state owners.

Currently our POABOD is on a quest to purchase the Amenities within the development. The property owners over the years have been told that the POABOD can not purchase the amenities. Our Declarations and Articles of Incorporation do not allow for the Property Owners Association dues to service debt. The Board has looked for two years to find a legal opinion that would state, "you can buy the Amenities". This venture will cost over 6 to 10 million dollars. The POABOD had a five-year projection for the dues that contained a 59% increase without the purchase of the Amenities. The property owners have no control over the POABOD spending, as a previous Board of Directors removed a budget approval provision by members from our bylaws years ago.

We have formed a group called Fairfield Harbour Property Owners Reform Team or FHPORT. Last year we petitioned the POA Board for bylaw changes to get more voting rights and spending caps. Thirty (30%) percent of the membership signed the petition. That was 903 voting members asking for a chance to vote on the changes. The POA Board refused to allow a vote and dismissed the petition.

Our group's members have contacted the following North Carolina Officials:

1) North Carolina Attorney Generals Office
2) North Carolina Secretary of States Office.
3) North Carolina Real Estate Commission.
4) Federal Government Representatives.
5) State Representatives
6) Local Government Representatives

All the Agencies and Representatives have said they could not help and that we needed to hire a lawyer to have our rights enforced. Most lawyers advise that to take on the Association you need to be ready to spend upwards of $100,000 dollars. The current law and State Government Agencies that control the Non Profit Corporations which most Homeowners Associations operate under are generally ineffective. Alternatively these agencies may not want to enforce the statutes. As a result, Property Owners are left fending for themselves against an organization that has virtually unlimited resources produced by our own dues with which to defend itself. All Homeowner Associations have insurance policies and we have been told "if you don't like it sue us". We as Property Owners clearly need help from our legislators and from State Agencies to protect our Rights. Laws need to change or new ones created to protect property owners and members of Associations from unscrupulous Homeowner Association Boards. Though our group FHPORT has organized in our community there are those who ridicule and demean people that take a different point of view. Challenging the powers of the establishment is a difficult undertaking. Any and all help would be appreciated and if you need to contact us please do so.

Sincerely,
Members of the Fairfield Harbour Property Owners Association and Members of FHPORT Inc.
Tom Cherney, Rich Marshall, Mandi Johnson, Tony Morello, Pat Byrne, Rich Edwards
252–617-6276

Record

Powder Horn Mountain Property Owners' Association, Inc

1568 Powder Horn Mountain Road
Deep Gap, NC 28618
(828) 264-2072
E-mail: manager@powderhornmountain.com
Web site: www.powderhornmountain.com

February 1, 2010

Members of the House Select Committee on Homeowners Associations
C/o Committee Assistants - Susan Doty & Jayne Nelson
Legislative Office Building, Room 643
300 N. Salisbury Street,
Raleigh, NC 27603-5925

Re: Public Hearing on Homeowners Association Related Issues on February 2, 2010

Dear Honorable Representatives on the Select Committee on Homeowner Associations:

As a professional operations manager of a large property owners' association (a more accurate term than homeowners association), I would like to make a few written comments for the public record regarding issues related to homeowners associations. I am quite certain that you Committee members have most likely already heard some real horror stories regarding the egregious management of these associations and/or egregious treatment of property owners by their associations. I am also certain that at least some of these stories are likely based on true and accurate facts and very bad real life experiences.

As a former manager in business and industry and for the past 8.5 years as a property owners' association manager, it has been my personal experience and observation that 5% of such entities and/or certain groups of individuals account for 95% of the problems experienced by such groups of entities, their individual entities and members, including property owners associations. These "bad apples" tend to spoil the image and outlook for their affiliated groups and their memberships. Unfortunately, I believe that no matter what legislation is passed or regulations implemented that many of these entities and individuals will continue to act as they do. Just visit any NC criminal or civil court room on a day it is in session and you will see clear and irrefutable evidence of this reality. It has also been my personal experience and observation that we (society and legislative bodies) tend to equally punish the many good and honest entities and individuals with over regulation and far overreaching laws just to punish the few "bad apples". It has also been my personal observation that failure to enforce existing laws and regulations already on the books is a very large part of this problem. <u>We are over regulated to death in NC!</u>

I truly believe the majority of professionally managed property owners associations are very efficiently and effectively operated by their representative boards and managers to the great benefit of their memberships and local communities. I would suspect that some

small associations, often operated by real estate developers, their volunteer boards and staff, or even individual owners, have such difficulties due to their lack of knowledge, experience, resources and internal oversight. I also suspect that many of the existing problems also have to do with current economic climate and the resulting stress that it has placed on many associations and their management and membership. I have also found from personal experience that many property owners simply do not understand or want to accept their own responsibilities as owner-members when buying into planned communities complete with restrictive covenants and legal commitments to fund the operation of their communities and their amenities and infrastructure. In fact, I personally fight this battle nearly everyday as an association operations manager.

I believe the two primary and relevant statutes, Chapter 47F – NC Planned Communities Act and Chapter 55A – NC Non-Profit Corporation Act, provide a sufficient and meaningful structure for the effective and efficient operation of property owners associations with modest revisions if properly applied and enforced. The need for better education for association management, boards and members is the real issue at hand, not more laws and regulation to further complicate our lives and day to day existence. I would simply ask that you proceed with extreme prudence as you move forward with your hearings and subsequent deliberations and any resulting legislative proposals that your Committee may generate and bring before the General Assembly for its consideration.

Thank you in advance for your kind review and consideration of my comments above and I would welcome any questions or comments that you may have for me. I regret that I could not be present in person for the hearing tomorrow on such short notice and due to the long distance between Deep Gap and Raleigh. However, I can be reached at the above phone number, mailing address or e-mail address Monday through Friday.

Sincerely,

J. Grant Mastin
Operations Manager & Member of the Community Associations Institute

"Experience the Future on the Mountain!"

Cc: Rep. Cullie Tarleton, Rep. Steve Goss, Sarah Stubbins – CAI; George McSwain – PHM POA President, Pat Hetrick

Recd

Jayne Nelson (Rep. McGee)

From: Mark Morano [mrm@herrin-morano.com]
Sent: Monday, February 01, 2010 3:24 PM
To: Jayne Nelson (Rep. McGee)
Subject: Re: Committee on homeowners assn hearing tomorrow
Attachments: hoaselectcommitte.submission.doc

Attached. Thank you. (I also received a response from Ms. Susan Doty and have sent it to her.)

----- Original Message -----
From: Jayne Nelson (Rep. McGee)
To: Mark Morano
Sent: Monday, February 01, 2010 3:20 PM
Subject: RE: Committee on homeowners assn hearing tomorrow

Yes Mr. Marano, that would be fine. Please do so as soon as possible so we have time to get it before the committee tomorrow.

Thanks,

Jayne Nelson

Jayne A. Nelson
Legislative Assistant to Representative Bill McGee
North Carolina General Assembly
phone 919.733.5747 ~ fax 919.754.3321
mcgeela@ncleg.net

From: Mark Morano [mailto:mrm@herrin-morano.com]
Sent: Monday, February 01, 2010 09:45 AM
To: Susan Doty (Rep. Weiss)
Cc: Jayne Nelson (Rep. McGee)
Subject: Committee on homeowners assn hearing tomorrow

I would like to submit a written comment for the hearing tomorrow, but have never done this before. Can I e-mail it to you as a "Word" attachment? Is the deadline this afternoon?

Thanks.

Mark Morano
Washington NC

Written statement submitted to
House Select Committee on Homeowners Associations

To: Rep. Jennifer Weiss, Co-chairman
Rep. William C. McGee, Co-chairman

From: Mark Morano
124 Cypress Bay
P. O. Box 2012
Washington, N. C. 27889-2012
mark.morano@yahoo.com

Date: February 1, 2010

Re: Hearing on February 2, 2010

I would like to submit this written statement in support of what I understand is a proposal to require homeowners associations (HOAs) to give their members an opportunity to participate in budgeting decisions.

I am a member of a homeowners association in Beaufort County. We are not a condominium, so we are not subject to the provisions of the North Carolina Condominium Act (Chapter 47C). Our association was formed before the North Carolina Planned Community Act (Chapter 47F) was enacted, so we are not subject to it, either. (Also, I am not sure if our community is large enough to be subject to the Planned Community Act.)

Because of this, there is no requirement that our board provide individual homeowners with a copy of a proposed budget. Nor is there a requirement to provide homeowners with advance notice about a board meeting to adopt a budget. Also, there is no requirement that the board give any notice to individual homeowners about a plan to expend a significant portion of our HOA's funds.

I would like to briefly describe two recent instances involving our HOA:

(1) The board recently spent about 15% of our HOA's funds on a discretionary, non-emergency matter (landscaping). This amount was more than three times the amount that was contained in the budget for this. Originally, the "landscaping" was advocated as a means of addressing drainage issues, but it was ultimately conceded that its purpose was simply

"curb appeal." In any event, at no time before this substantial expenditure was made were any individual homeowners given any specific information about how much of the HOA's money was going to be spent. I even sent two written inquiries to HOA officers about this, but received no response until after the contract for this landscaping had been signed and the work was about to begin.

(2) An announcement for a recent board meeting stated that the purpose of that meeting was to address two specific issues, neither of which was the budget. However, at that same meeting, the board began to consider and adopt the budget. At one point, it was even suggested that the proposed budget be circulated via e-mail to board members only (not the general membership) and that the board then approve it via e-mail.

If I not been at that meeting as an observer and objected, no individual homeowner would have known that the board was going to adopt/approve the budget.

I do want to say that I appreciate and respect the hard work that goes into being a board member for an HOA. I do not intend this statement as being a criticism of any of them. However, HOA boards are spending "other people's money." Also, at least in our HOA, the board has the power to increase assessments (in the form of monthly dues). This is really not that different from having the power to tax, since these assessments are legally enforceable against the homeowners. Because of this, I think that it is important that individual homeowners be notified in advance of any significant financial matters, and have an opportunity to participate in the decision.

Another reason why other homeowners and I are concerned about how our HOA spends its money is that we are located on the Pamlico River, and our HOA's facilities are very vulnerable to hurricanes and flooding. We need to preserve our HOA's funds to be ready for the next storm.

In summary, I would *support* a proposal to extend to homeowners associations the same type of protections that are contained in Chapter 47C [N.C.G.S. 47C-3-103(c)] and Chapter 47F ([N.C.G.S. 47F-3-103(c)] about budgets.

Thank you.

/s/
Mark R. Morano

Read

Jayne Nelson (Rep. McGee)

From: Steve Nelson [slnelson@mcg.net]
Sent: Monday, February 01, 2010 1:14 AM
To: Rep. Michael Wray; Rep. Julia Howard; Rep. Chris Heagarty; Rep. Beverly Earle; Rep. George Cleveland; Rep. William C. McGee; Rep. Jennifer Weiss
Cc: Jayne Nelson (Rep. McGee); Susan Doty (Rep. Weiss)
Subject: North Carolina Homeowner Association Statute Changes

1/31/2010

To House Select Committee on Homeowner Associations,

My family and I own a lot in a North Carolina subdivision that is subject to a Homeowner's Association. I am also a real estate professional in Minnesota and have been involved in creating homeowner associations and in helping associations resolve problems created by others. I wish I could afford the time to attend one of your hearings but I am unable to do so due to my work load. I would strongly encourage you to look at the Minnesota "Common Interest Community" statutes which can be found in Chapter 515B (see https://www.revisor.mn.gov/statutes/?id=515B). I think the Minnesota statutes clearly address many of my concerns and are fair between the owners and developers plus set out adequate protection and disclosure for purchaser's protection. A declarant referred to in the Minnesota statutes is essentially the developer or the contractor who is building the units.

Rather than bore you with all of the specifics of what I have experienced with a homeowners association in southwestern North Carolina, I will try and highlight some areas where I found lacking in the association I am involved in and what I think the state of North Carolina should do to help all owners in associations. I am sure that there are many well run associations and there are well written documents but unfortunately the association I am involved with currently is not one of them.

When I purchased the property I tried to do my due diligence and asked the title company to send me a copy of all of the homeowner association documents since my seller didn't have any and I had no information about who were the then current officers or directors of the association. The homeowner documents I received were unfortunately incomplete as I have since found out. Much to my surprise I have learned that the directors are not elected by members of the association but are appointed by the current board members. The officers are to be elected by the association members but have never been elected because there has never been a quorum at an annual meeting. The current board just appoints who they choose amongst the membership to be the Association's officers. The association documents were written primarily to protect the developer and the developer only.

Since purchasing my North Carolina property, I have learned many things. The association is run by some people who maybe have good intentions but they operate the association in a very undemocratic manner in which they are attempting to impose their will on all of the owners. The following is a synopsis of my experience.

1. The homeowner association documents were not all furnished to me by the title company (only 2 of the 3 of record). One was missed but more important is that I have since found out that there were at least one if not more documents amending the original recorded documents which had allegedly been passed by the board (i.e. not the association members) and had never been recorded or served on the members despite the requirement under the original recorded documents that require all subsequent amendments to be passed by the members of the association and are not to become effective until 30 days after notice to the owners and the filing of the amendment with the recorder have taken place. Thus, how is a purchaser to find out what are the governing documents when the board doesn't follow the documents and they are not of record? (See Minnesota Statutes 515B.4-107 to 108)

2. The documents filed say that the officers are elected by the homeowners. Nothing in the recorded documents at the recorder's office mentions about election of the directors. Thus, in some associations I have seen, the officers were also deemed to be the board of directors of the association. I have since learned that the organizational documents (i.e. articles of incorporation) for the association which was not of record in the recorder's office provide for the association to be run by directors. The articles of organization have no provision for election of the directors by the association's membership. Instead, the directors are to be appointed or elected by the current board members. This was done by the developer to retain control of the association. The developer also inserted provisions that the developer did not have to pay any assessments for any of his lots until a lot was sold. Since the board is not elected by the members, the developer retained control until he sold his last lots or he voluntarily turned over the board to some of the members by appointing them to the board. The board has elected its own successor and replacement board members ever since. Thus, the individual members of the association have no say in election of the directors. The owners have the right to elect the officers but since officers can only operate under the direction of the directors, the members essentially have no way of controlling the association. Also, the members of the association have never elected officers because the association has never had a quorum present at any of the annual association members meetings so the directors have elected the officers from amongst themselves. Essentially, the current directors have just appointed the officers despite contrary provisions within the documents.

3. The homeowner's association is responsible for maintaining the roads and common areas. There are no common areas so the roads are the only responsibility of the Board and the roads are easements along the common boundary lines of the respective lots. The Board claims they have the right to levy assessments in any amount and the members have no say as to what they can or can't do. Essentially they claim they have the right to levy assessments for whatever they deem to be part of improving the roads whether it is within or without the development. The roads that seem to always receive the most attention are those roads nearest the directors homes. The directors furthermore have the right to lien my property if I do not pay my assessments. Assessment without representation makes you appreciate how the people in Boston must have felt before the Boston Tea Party in the harbor.

4. The operation of a board of directors should be transparent. The members should have the right to attend the meetings of the directors and the right to receive copies of the minutes of the meetings of the board. In Minnesota, most run associations send out copies of the minutes of the board meetings to all of the members so they know what is going on in the association. When I requested copies of the homeowner's association documents the board bulked at furnishing me the documents. The right to these documents appears to be mandatory under North Carolina non profit corporation law and if not it should be mandatory. The association should be entitled to reasonable compensation for providing copies which is only fair. There should be a right to have access to corporate documents including minutes of all meetings of members and board of directors. (See Minnesota Statutes 515B.3-118)

I would ask that you consider the following when amending your statutes:

A. In Minnesota and other states, anytime you buy into a common interest community there is a requirement of full disclosure by the Seller relative to the homeowners association (See MN Statutes 515B.4-106 to 108). This should be applicable to all homeowner associations that maintain common elements shared and paid for by all members. A seller should be required to provide a prospective purchaser with copies of the organizational documents and the purchaser has 10 days within which to inspect the documents and to cancel the agreement if the documents are not acceptable to the purchaser. Upon request, a homeowner's association in Minnesota is required to provide a "sales package" which includes a complete copy of the Covenants and Declaration, Articles of Organization, Bylaws and any amendments to these documents, rules and regulations, copies of the budget and financial statements including the balance of any reserve accounts, a statement as to status of the

assessments for the particular property and a list of any planned special assessments, names of board members and officers and copies of the last two years of minutes. The purchaser then has 10 days to review and approve the documents during which the buyer can cancel the purchase agreement or back out if the documents are not acceptable and receive a full refund. This prevents law suits by disgruntled homeowners and puts everyone on a level playing field. Most Associations are authorized to charge the Seller for the cost of duplicating these documents for a modest fee of $50 to $75. The legislature could even set a maximum fee and provide that the homeowners association can charge the lesser of the actual cost or $75. This will give a purchaser of a parcel subject to an association all information needed to properly evaluate the association. A purchaser who subsequently becomes an owner is than a more informed person which benefits the Association as well. There is a standardized addendum and/or language used in Minnesota purchase agreements to comply with this disclosure requirement which must be included in a purchase agreement. Essentially, it notifies the buyer that the property is subject to a homeowners association, that seller must provide the required documents and the right to rescind the agreement within 10 days of receipt of all required documents. Failure to give the notice makes the seller subject to a fine. If the notice is provided and the buyer closes before the documents are furnished, the buyer is deemed to have waived the right to inspect the documents.

B. Furthermore, I would suggest that you create a law that requires the establishment of replacement reserves for any capital improvement to the common areas to be maintained by the association. This should be in addition to the normal maintenance and upkeep expenses for the common improvements. (See MN Statutes 515B.3-114)

C. All members of the Board of Directors of an association once the developer has turned over control should be elected by its members. All directors should be required to be members of the association or officers of an entity that holds title to a unit or a trustee of a trust that is an owner. The Board should then elect the officers from amongst the directors. Board of Directors should not be allowed to levy assessments that are lienable unless the association members have the right to vote and elect the directors. All directors should be re-elected each year.

Furthermore, the board should be required to send out an agenda in advance of an annual meeting together with a copy of the proposed budget and proposed annual assessments. (See MN Statutes 515B.3-115(c)) The budget and all regular assessments for reserves and maintenance of common areas should be approved by the members at a duly qualified meeting. Most well written documents for an association require the board to propose a budget which then must be submitted to the association membership and adopted by the association membership before the regular assessments can be levied. If the board fails to do so, the prior years assessments remain in effect. Likewise, special assessments against all owners for unusual items not covered by insurance or replacement reserves are generally approved at a special meeting of the members of the association. Associations that have an obligation to maintain common areas used by all members are also required to set aside and collect replacement reserves in addition to the annual maintenance and upkeep expenses (See MN Statute 515B.114). In Minnesota, the developer (i.e. declarant) or first directors have a reserve analysis done to determine replacement cost and life expectancy of the improvements to the common areas and then the cost is amortized over the life expectancy of the various items and divided up amongst the homeowners based on the allocation of expenses in the declaration documents so that hopefully enough money will be available to replace the capital improvements when needed.

All minutes of directors and members meetings should be available to the association members within a reasonable period of time after a meeting either by mail or electronic notice.

The bylaws of the Association, articles of organization and the covenants and declaration should only be amended by the members of the association based on the required vote in the organizational documents. The changes should either be proposed by the Board or 5 or 10% of the members of the

association. The notice of the meeting at which any amendments are to be addressed should require specific notice and provide the homeowner with a copy of any proposed amendments and a summary of how they will affect members. Once voted on and approved, changes should be effective only after service of notice upon the entire membership and all such amendments to the Covenants and Declaration should be recorded.

E. The assessments in the association should be limited to those purposes declared in the original declaration and covenants. Amendments to expand the scope of the association should require disclosure of an estimate of future costs to the members of the association and should only be enacted by a super majority of the association members rather than a simple majority (75%) of those present for a quorum.

F. The association should be limited to only owning or acquiring an interest in land within the limits of the property covered by the covenants and declaration unless the land is in another association that is also subject to or part of a master association. Also, the right to levy assessments should be limited to such improvements permitted under the organizational documents and said improvements should be made on land owned and controlled by the association except where a master association exists and all of the associations share costs of improvements owned by all associations under the master association. Associations should be restricted from entering into agreements with other homeowner associations to share in costs except when the other association or associations have the legal authority to levy assessments to cover the other association's proportionate share of said costs.

Again, I strongly encourage you to look at the Minnesota law which has been in existence for about 10 years and may provide you with some ideas as to how you can amend your current laws to address some of my concerns. Thank you for your considerations.

Very truly yours,

L. Nelson
3475 Siems Ct.
Arden Hills, MN 55112
(651) 636-0414

Jayne Nelson (Rep. McGee)

From: Lawrence E Overton [lorinceoverton@bellsouth.net]
Sent: Saturday, January 30, 2010 2:53 PM
To: Jayne Nelson (Rep. McGee)
Subject: Placed on agenda for N.C. legislature on special committees to deal with community association
Attachments: Violation of board in 2009.pdf

Dear Representative Bill McGee:

I am forwarding you information on our" Kaymoore Association" The attachment will show the violations of the board. The only recourse we as homeowners is Civil court which is very expensive.We have no protection from a board that has no knowledge of community law, covenants, By-Laws, State Statues and is not willing to learn.The board is not held accountable except for the law.I would like to know if the insurance company can hold the board responsible since they have directors & officers insurance. Could they cancel their policy if they violate the covenants, By-laws or state statues. I would like to see legislation in the following areas.

1. Associations that are self-Manage are required to have a managers license. "Managing Licensing Act.
2. Easier way to pursue legal action if board breaks law and violates documents.
3.Future By-laws and covenants are required to have new state statue laws in documents

Sincerely,

Lawrence E. Overton

November 19,2009
Dear Homeowner:
The Items listed below are violations of the board at the annual meeting held November 20, 2008.
1. Meeting notice was not properly mailed, but attached to Mailboxes.(Notice could have blown off mailboxes.) Homeowners wouldn't have known of meeting and that could affect the outcome of meeting. Violation of By-Laws Article IV,Section 3 .Should have been mailed.
2. sh
3. Meeting Notice did not properly specify the proposed agenda.(violation of State Statues 47F-3-108 Meetings. Reason they should be listed is- Owners will base their decision whether to attend the meeting on the purpose stated in the notice. Imprecise language or unclear purpose in a special meeting notice can render a meeting invalid. Items to be discussed should be listed.
4. Meeting had only two Board members, President and Secretary. This is a violation ofKHOA's By-Laws (Article IV, section 1) and they had no Vice President a Violation of (Article IX, Section 1)
5. The secretary is the only person who can hold multiple offices. (Article IX, Section 7) it is a violation for any other officer to do so.
6. Dues payable January 1 stated in (Article XVI of Covenants).
7. Maintaining entrance and common areas. Violation of Covenants Article XVI.
8. Board gave out improper address of Kaymoore Association to Homeowners to pay dues. This was later corrected after bringing it to boards attention.
Sent out notice and requesting a rescheduling of meeting without results.

HOMEOWNERS, IF YOU REFER TO OUR ANNUAL MEETING LAST YEAR YOU CAN SEE WE ONLY HAD TWO BOARD MEMBER THAT OPEN THE MEETING. A VIOLATION OF BY-LAWS. REFER TO

2) IF YOU REFER TO OUR ANNUAL MEETING YOU WILL SEE JEFF LACKIE, PRESIDENT & ARTICLE V, SECTION #
KEVIN SWIDEN, SECRETARY; THERE IS NO VICE PRESIDENT. VICE PRESIDENT SHALL BE MEMBERS OF THE BOARD AT ALL TIMES. REFER TO ARTICLE III SECTION #1

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies led to cast, one-fourth (¼) of the votes of each class of membership shall constitute a quorum ny action except as otherwise provided in the Articles of Incorporation, the Declaration, or By-laws. If, however, such quorum shall not be present or represented at any meeting, the bers entitled to vote thereat shall have power to adjourn the meeting from time to time, out notice other than announcement at the meeting, until a quorum as aforesaid shall be nt or be represented.

Section 5. Proxies. At all meetings of the members, each member may vote in person or roxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be able and shall automatically cease upon conveyance by the member of his lot.

ARTICLE V. BOARD OF DIRECTORS.

→ Section 1. Number. The affairs of this Association shall be managed by a Board of no less three (3) and no more than five (5) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting the members shall elect at least one tor for a term of one year, at least one director for a term of two years and at least one tor for a term of three years; and at each annual meeting thereafter the members shall elect tors for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without , by a majority vote of the members of the Association. In the event of death, resignation moval of a director, his successor shall be selected by the remaining members of the Board, shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may r to the Association. However, any director may be reimbursed for his actual expenses red in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any n in the absence of a meeting which they could take at a meeting by obtaining the written ival of all the directors. Any action so approved shall have the same effect as though taken meeting of the directors.

charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability insurance covering the Association, its directors, officers, agents and employees and to procure and maintain adequate hazard insurance on any real and personal property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the entrance landscaping and improvements, and Common Properties, if any, to be maintained.

ARTICLE IX. OFFICERS AND THEIR DUTIES.

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

HOMEOWNER, THIS AMONG OTHER ISSUES LIKE OUR RECORDS IS WHY WE NEED A MANAGEMENT COMPANY. A MOTION FROM THE FLOOR IS NEEDED ACCORDING TO ROBERTS RULE OF ORDER.

KAYMOORE HOA ANNUAL MEETING

Georgia Taylor Recreation Center
Winston-Salem, NC
Thursday November 20, 2008 6:55pm-8:40pm

Officers Present: Jeff Leckie, President
Kevin Swider, Secretary

Pre-Meeting Discussion: At the start time of the meeting quorum was not established. Jeff and Kevin discussed options with the homeowners and expressed their disappointment. The homeowners decided to continue with the meeting excepting the fact that no voting could take place. Quorum was eventually established with 8 Proxies and 14 Homeowners present.

Call to Order: Kevin Swider called the meeting to order and welcomed everybody.

Introduction of Board Members: Kevin Swider and Jeff Leckie introduced themselves to the homeowners

Approval of 2007 Annual Meeting Minutes: Kevin read the minutes from last year's annual meeting. The minutes were unanimously approved by the homeowners.

Financial Report: Jeff reviewed the 2008 Profit and Loss sheet to date. He also presented the 2009 budget, which was approved by the homeowners. Both are attached to this document.

Year in Review: Jeff and Kevin discussed issues from the year. The accomplishments were regular news letters, summer time social, new landscaper, successful completion of taxes, and cleaning up the pond area (trespassing, lids for trash cans, and research on lot 12). The disappointments were no interest from the neighborhood, board vacancies, and lack of work on the website.

Sheds: Jeff brought up a proposal to amend the by-laws to allow sheds. The proposal was liked by the homeowners. They voted to go ahead and present to the neighborhood to receive the needed 80% of votes to change. The following will be changed in the proposal; the shed must be five feet from any property line, the shed foundation, if not slab, must be painted a solid color to match shed, a fine system will be set in the amendment. The fine would be $100 for any violation and the homeowner would have 30 days to rectify. If not fixed the homeowner would be fined $10 a day from day 31-90. If not fixed at day 90, there will be a lien filed against their home for the fine amount and legal cost. The fines will increase to $30 a day on day 91 with a new lien filed every 45 days.

Lot 12: Jeff presented the following proposal to the homeowners and they unanimously approved the proposal.
Problems with lot 12:

- Lot 12 has several areas where the water wells and does not drain into the pond or drains into the pond at a very slow rate.
- Lot 12 is downhill of much of the rain that falls north and east of the lot, adding to the already existing drain problem.

LIST OF FOLLOWING ERRORS IN NOTICE

(1) NO YEAR

(2) NOT MAILED. VIOLATION OF COVENANTS ARTICLE III, SECTION TWO & STATE STATES 47F-3-108 MEETING

(3) MEETING REQUESTED AMENDMENT CHANGE & NOT LISTED ON ANNUAL NOTICE. VIOLATION OF STATE STATES 47F-3-108 MEETING

REFER TO-N

NO YEAR ON BALLOT
NOT VALID BECAUSE NOTICE WASN'T SENT BY MAIL
PUT ON MAIL BOX

Dear Homeowner(s),

The annual Kaymoore Homeowners Association meeting will be at 6:30pm on Thursday November 20th. The meeting will be at the Georgia E. Taylor Neighborhood Recreation Center located at 1471 W. Clemmonsville Road, Winston-Salem, NC 27127. We will be discussing important issues, as well as, electing officers for 2009. If you can not make the meeting please give your proxy vote to a neighbor by using the form below. If you have any questions please email the board at board@kaymoore.org.

Kevin Swider
Secretary- Kaymoore HOA

PROXY VOTE PERMISSION

I _____ owner(s) of lot # _____ give permission to _____ to vote on my behalf.

_____ Signature Lot Owner 1 _____ Date

_____ Signature Lot Owner 2 _____ Date

November 19, 2009

Dear Homeowner:

The Items listed below are violations of the board at the annual meeting held November 20, 2008.

1. Meeting notice was not properly mailed, but attached to Mailboxes.(Notice could have blown off mailboxes.) Homeowners wouldn't have known of meeting and that could affect the outcome of meeting. Violation of By-Laws Article IV,Section 3 .Should have been mailed.
2. sh
3. Meeting Notice did not properly specify the proposed agenda.(violation of State Statues 47F-3-108 Meetings. Reason they should be listed is- Owners will base their decision whether to attend the meeting on the purpose stated in the notice. Imprecise language or unclear purpose in a special meeting notice can render a meeting invalid. Items to be discussed should be listed.
4. Meeting had only two Board members, President and Secretary. This is a violation of KHOA's By-Laws (Article IV, section 1) and they had no Vice President a Violation of (Article IX, Section 1)
5. The secretary is the only person who can hold multiple offices. (Article IX, Section 7) it is a violation for any other officer to do so.
6. Dues payable January 1 stated in (Article XVI of Covenants).
7. Maintaining entrance and common areas. Violation of Covenants Article XVI.
8. Board gave out improper address of Kaymoore Association to Homeowners to pay dues. This was later corrected after bringing it to boards attention.

Sent out notice and requesting a rescheduling of meeting without results.

Rec'd

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Tuesday, February 02, 2010 10:28 AM
To: Rep. William C. McGee
Cc: Jayne Nelson (Rep. McGee)
Subject: FW: House select subcommittee on Homeowners Associations
Importance: Low
Attachments: Jennifer Weiss.docx

FYI

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Mark R. Richards [mailto:mrichards@carolina.rr.com]
Sent: Tuesday, February 02, 2010 10:11 AM
To: Susan Doty (Rep. Weiss)
Subject: House select subcommittee on Homeowners Associations
Importance: Low

Good Morning,

I wish to submit the attached letter to your office as representation for the House select subcommittee on Homeowners Associations meeting.

Thank You,

Mark R. Richards

Rep. Jennifer Weiss
NC House of Representatives
300 N. Salisbury Street, Room 532
Raleigh, NC 27603-5925

My name is Mark R. Richards from Charlotte NC and I live in a development called Morris Farms. Morris Farms consists of 363 homes with an average price range between 100K – 125K. Over the last few years, we have witnessed numerous accounts of HOA mismanagement of member's funds as well as major abuses of power. We have made numerous attempts to access and review the association's financial records and have been unsuccessful on all accounts. We have asked numerous questions and received very few answers, most which have been incomplete and sometimes condescending.

Morris Farms is now being managed by a company named CAM, Carolina Association Management. I personally have evidence that CAM conspired with our HOA board to fix the outcome of the last election of the board of directors. I have evidence that our board president used association funds for her personnel which was used against us in the last election. This board has threatened people with fines for so called violations that fall under the jurisdiction of the county, clearly overstepping their boundaries.

The Board and management company are out of control and there is no help available for the homeowners. Our only representation is a 15 minute open floor to the members at the annual meeting. However, if the meeting runs late, we do not get that 15 minutes as we have to vacate the rented room.

I have written to the Attorney General's office and received a standard form letter in response stating that there was nothing they can do, I have written to the Secretary of State's office and received a standard form letter in response from them as well stating that there was nothing they can do. They tell us that we should get a lawyer on our behalf but what sense would that make? We would be paying money to an attorney and the board would hire an attorney using the association funds. Therefore, we are paying for both sides.

I have records of where the board and management company falsified financial statements to hide money and it doesn't take a financial expert to figure it out. This past year, between 45-75K has been suspiciously moved on and off of financial statements.

The bottom line here is that the members of our association have been denied every option that our by-laws provide us and we have nowhere to go to right this wrong. We've been told to vote them out and when we tried, they manipulated the outcome of the election. In past elections, the board actually took the votes out of the meeting and into their homes to count them. We asked to review the votes and proxies for the last election and have been continuously been stonewalled.

The State of NC needs some kind of group, committee or board that can step in and force these boards and management companies to comply with the By-laws of each association. Being that HOA's are non-profit organizations registered under the Secretary of State, I'm wondering why they do not govern the rules of these groups.

Many homeowners are actually fearful about voicing their opinion as they fear for reprisals from the board in the form of harassment and threats of fines for anything they can find or make up. I have knocked on doors and spoke with many of these people, some of which are out of work, cannot pay their mortgage and therefore have not paid their dues. They have been threatened by the Board with

liens and foreclosure. This is absurd because this community's annual budget is around 45K a year and the Association has over 100K in assets and some of it in CD's at two different banks.

I am in the process of putting a package together that will point out all of the allegations I speak of above. This will consist of financial statements, emails, letters, and anything else I have to prove the allegations. I am sorry I don't have it available for the scheduled hearings today as I am a little late in getting involved in this matter.

We need HELP, we need REPRESENTATION! We know we're getting ripped off and there seems like there's nothing we can do about it. This just furthers the boldness of the Boards and Management companies and the people have had enough. We want to be heard and represented.

I will forward my information package to your office very shortly but I wanted to be heard and represented in any way shape or form at today's hearing.

Thank You,

Mark R. Richards
Member of the Morris Farms HOA
8714 Sweet Sage Lane
Charlotte, NC 28227
HM: 704-573-1355
Cell: 704-301-8704

Record

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01, 2010 5:00 PM
To: Jayne Nelson (Rep. McGee)
Subject: FW: Comments for Upcoming Homeowner's Hearing

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Rep. Jennifer Weiss
Sent: Sunday, January 31, 2010 08:36 PM
To: shelbot@earthlink.net
Cc: Susan Doty (Rep. Weiss)
Subject: RE: Comments for Upcoming Homeowner's Hearing

Dear Shelley:

Thanks for sharing your views about HOAs with me. I will keep your suggestion in mind.

Regards,

Jennifer Weiss, NC House 35

From: shelbot@earthlink.net [mailto:shelbot@earthlink.net]
Sent: Sat 1/30/2010 11:40 AM
To: Rep. Jennifer Weiss
Subject: Comments for Upcoming Homeowner's Hearing

Dear Ms. Weiss,

I received an email concerning the upcoming Homeowner's Association meeting on February 2, and it encouraged sending an email if one could not attend. I do have one concern I would like addressed (as I'm sure with many others having the same concern), which is about increases in costs of homeowner's dues.

One of the reasons I moved into the townhome I'm currently living in, was for the reasonable homeowner's dues, and of course the wonderful neighborhood. I have seen my dues increase from $110 a month when I moved in, to $159 a month for this coming year. It may not seem like much - but to me, it becomes a hardship as I (along with many others in this economy) are barely able to meet living costs without going into the hole each month.

I feel like these continual increases will make homes in the neighborhood that much more difficult to sell (for those who are trying to do so). Plus, it seems like an idea to do certain things, like add a fence around the neighborhood, should require residents 'agreeing' to it, rather than having to go out of their way to 'not agree'.

What my request is: For any increases in homeowner's dues, or for major changes to a development that would require extra money spent by the homeowners, would require 80% of the homeowners of that development to AGREE to it. Instead of the current ideology of "this will be implemented unless a certain number of people say no." This would require the committee to attain "yes" votes.

THANK YOU so much for your time and consideration, I really do appreciate the opportunity to finally be heard! :)

Warm regards,
Shellie Spero
8111 Satillo Lane
R[redacted]gh, NC 27616
([redacted]rside/Cypress Grove Development)

Jayne Nelson (Rep. McGee)

Record

From: Stephen Sulkey [ssulkey@atmc.net]
Sent: Monday, February 01, 2010 9:04 AM
To: Rep. William C. McGee
Subject: Committee on HOA's

Ladies and Gentlemen,

Unfortunately it is very difficult for me to attend on of your public hearings due to the distance to Raleigh from Wilmington. I might suggest to get a better sampling of public opinion the members of the House Select Committee on HOA's should hold hearings at different venues such as one in Asheville, one in Charlotte, one in Wilmington, and so forth.

So in lieu of trying to appear I am sending you this email with some of my thoughts on your committee, the actions of the legislature to date and some of the consequences of those actions.

First of all I've been in the business of managing community associations for ten years and was in property management for years before that. My association certifications are CMCA, AMS and PCAM and I've also been a license NC real estate broker since 1995. I started out in this business working for a large management company and for the past three years have been running my own small company with 21 small scale associations. I am also a member of CAI National Faculty. Obviously the past couple years have been both challenging and frankly at times upsetting with the economy. HOA's are affected by economic downturns like anything else. I am also a proponent of manager licensing and have been since 2000, long before there was any call for it from either the industry in NC or the legislature.

To be sure I believe the committee's most important task is that licensing occurs as soon as possible (truly it should be in effect now) and that it be done right. There are too many 'managers' out there without a clue. Trust me, I know. I clean up their messes when I get new accounts. Also, if the licensing law is to be seriously intended for the public's good, there must be some control over 'self managed' associations. Just because they are not 'paid' managers they still need some level of competence dealing with member funds and property, and some monitoring for their honesty. Again, I've had to clean up messes for 'self managed' associations as well.

Aside from that I know the legislature has passed a number of bills intended to protect homeowners such as 1541 and 806 but they have done a lot of damage under the law of unintended consequences. First of all, more than 85% of the unit owners that I have in collections now were in and out of collections well before the current economic crisis. I actually have a very small percentage of delinquencies overall but many of those who are delinquent are those owners who make a career out of skipping their financial responsibilities. What many of the efforts of the legislature have done is make it easier for them to play their little games while at the same time placing the onus of paying association bills on the backs of the vast majority that do pay. When members this past year heard these facts at annual meetings they placed blame not with the associations, management companies, collection attorneys, etc. but with their legislators. They may or may not take that to the ballot box but it is always possible they will.

An example recently is House Bill 806. As the law states I, as the agent for the association, make every effort of contacting the homeowner searching for their address. If they do not live in the unit we've mailed the letter stating they'll be turned over to a collections attorney to the unit in question as well as address of record, tax records, etc. Although addressed to the homeowner many of these letters do get delivered to the units by the USPS and it seems tenants do open them. The next thing I get a call from a very irate property owner that his tenant called him with this and I've violated his privacy. I explain that I am just following the law as placed on us by the legislature and he should contact his representative, etc.
And, of course, added postage and rules increases the cost of collections that all the

regular dues paying homeowners pick up the tab for in the long run unless the delinquent party does pay. I can tell you no one appreciates that the NC legislature has cost everyone more money, especially in these times. Again, the law of unintended consequences comes to play.

That is only one example but I urge the committee to play this like a game of chess. A good chess player is around seven moves ahead and you need to be as well. Before recommending any more actions to the legislature please try to think of all the possible consequences. If need be ask managers with experience. I can tell you many have been though this enough that they will be able to predict the outcome of the legislature's actions with unnerving accuracy.

Thank you for your time and attention to this matter and good luck with your committee efforts.

Stephen J. Sulkey, CMCA, AMS, PCAM
Professional Association Management Inc.

(910) 253-9147

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Record

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01, 2010 5:01 PM
To: Jayne Nelson (Rep. McGee)
Subject: FW: HOA Public Hearing Speaker

Attachments: State of NC Study on HOA foreclosure collection process and governance.doc

State of NC Study on HOA forec...

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

-----Original Message-----
From: Norm Thompson [mailto:ndthompson@bellsouth.net]
Sent: Friday, January 22, 2010 09:49 AM
To: Susan Doty (Rep. Weiss)
Subject: HOA Public Hearing Speaker

Ms. Doty,

I will NOT be able to attend the public hearing on HOA but wish to submit my statement for inclusion in the record when the meeting takes place on February 2, 2010 at 2:00 P.M. The statement is in the WORD attachment to this email.

I would appreciate a confirmation that you have followed up on my request. If you have any questions, I am available at 704-820-2936 or via email at ndthompson@bellsouth.net

Thank You,
Norman D. Thompson
Oxford Hunt HOA - President
704-820-2931

Norman D. Thompson
442 Doves Crest Ct.
Stanley, NC 28164
Oxford Hunt HOA- President
704-820-2936

Subject: "Study Commission" for the purpose of looking into issues relating to homeowners associations.

Representative Jennifer Weiss,

Due to travel distance, my opportunity to attend the "HOA Public Hearing" on Monday, February 1, 2010, must be limited to sending my statement to be recorded for the record.

The Oxford Hunt HOA has been in existence since March 1999. Since that time, there have been no completed foreclosures due to HOA issues. This success is due to an interface between a management company who was contracted to manage financial records as well as advise in the governance of the HOA to the associations Board of Directors. To say the least, a very effective way to support Board Members who may have limited legal and financial backgrounds and the property owner who may have financial pitfalls.

Common practices that have scored positive results in our HOA are due to holding to a standard that drives "fairness" to both the HOA as well as it property owners. Setting a threshold between assessment due dates and late fees protects the HOA from falling into arrears in its annual budget costs but also allows the property owner time to zero out a balance. Should the property owner fall into non-payment, proper notification is made to alert the property owner that lien proceedings are at hand. Further ignorance to adhere to the non-payment and associated late fees then results in legal lien proceedings. If the non-payment activity continues, legal foreclosure steps are put in place. This is where it is important to be fair with the property owner but at the same time, protect the HOA in maintaining financial balance to its budget. In times of hardship, a fair approach to allowing a one time IPA (Installment payment plan) by the Board of Directors, allows the property owner to both agree and follow through with making monthly payments and up front legal fees. This gives some window of opportunity for the property owner to balance out their account. Constant communication and interface through the Management Company and legal department is paramount.

I wish to submit the following process that is used in our HOA. As was expressed above, it serves as a very effective means to protect both the HOA and the property owner and at the same time, serves as a fair and just way to give a property owner a chance to recover from delinquencies.

Oxford Hunt Homeowners Association Lien and Foreclosure Process

Notice of Delinquency (30 day letter):

- The homeowner meets or exceeds a delinquent threshold amount set by the board of directors.
- A letter is sent informing the homeowner of the delinquency and asks them to pay amount due or contact us to make arrangements (this is done automatically if a threshold is set)
- If the homeowner pays the process ends here
- If the homeowner does not pay within the 30 days a request for lien will go to the attorney's office

Lien Proceedings:

- The attorney usually files the claim of lien within 2-3 weeks of the request date
- Once the account has been forwarded to the attorney's office for lien, all communication related to collection should now go through the attorney's office because there will be additional fees involved that will not be reflected on the homeowners account (and the association is now paying the attorneys to collect this debt)
- The fees (billed to the association) at this time are established for the lien filing. Extra charges may apply for cancellation of the lien and for any correspondence between the law firm and the homeowner. All legal fees incurred are collectible from the homeowner as part of the debt owed to the association.
- If the homeowner has not made contact or payment after 30 days, the board proceeds to foreclosure.

Association Foreclosure:

**Foreclosure proceedings will not begin until a signed permission slip from the board of directors for the community has been received.

Normally what happens once the process starts is the following:

- Claim of lien is updated
- Commencement package is prepared
- The hearing and sale date are scheduled at the courthouse (usually about 6-8 weeks out on the hearing and about another 4-6 weeks for the sale)
- The homeowner is notified of the above
- The hearing takes place with or without the owner present.

- The sale takes place as scheduled
- Assuming the association is the high bidder.... The deeds are prepared and sent out for the board president's signature and the straw man's signature
- The deeds are recorded upon completion of both signatures
- The homeowner is then notified of the eviction and has 10 days to vacate the property
- An eviction date is scheduled with the sheriff and the property manager would be present at this eviction

Anytime during this process the homeowner could pay the past due amount up to the date of sale. After the sale it would be up to the board to decide whether or not they would be willing to sell the property back to the homeowner.

From start of process to eviction it is usually about 4-6 months.

Lender Foreclosure:

- Once a property enters lender foreclosure our attorneys monitor the file and update us on a regular basis of about every 30 days.
- They will update more often around the time of the sale and hearing for the property.
- They will automatically provide updates unless told not to by the board..
- The attorneys will also stop (place on hold) any legal action that was started when they discover a lender foreclosure.
- If the lender foreclosure is abandoned or dismissed, normal collection process can be restarted at that time.

Bankruptcy and Relief from Stay:

Chapter 7 (usually surrendering the property)
Chapter 13 (usually keeping the property)

- When someone files bankruptcy, it is necessary to set him or her up with a brand new account.
- All amounts owed prior to the date of filing are put on what is called a pre-bankruptcy account and are considered un-collectible (through the lien and foreclosure process) as long as the bankruptcy case is open.
- If the bankruptcy is dismissed resumption of collections will take place as per normal process.
- Once a bankruptcy is discharged, any amount remaining on the pre-bankruptcy account is written off. If it is a Chapter 7, monitoring for Lender FC will begin if they are surrendering the property.
- Any amount that becomes due after bankruptcy can be collected through the process of filing for relief from stay.
- If the court grants the association relief from stay, ALL amounts owed then become collectible.

- Many times the court will rule that a consent order will be approved to resolve the motion for relief. This means that the court will set a payment plan in place to allow the homeowner opportunity to pay the past due debt. If the homeowner defaults on this plan the relief from stay is granted to the association and ALL amounts become collectible at that time.

Although I do not admit to fully understanding the ramifications for your study on "foreclosure collection process and association "governance.", I do feel that there is a fair way to both protect an HOA as well as a property owner when times of hardship occur. Our process certainly proves to be successful in returning a property owner to financial normalcy. Proper professional management and common sense of the HOA Board of Directors interfacing with an experienced management company such as how our HOA operates has proven to be very effective. I suspect there are HOA's in this state that do not recruit a management company qualified to support these types of legal issues. If this is true, a gap certainly can occur that has negative results in achieving a fair and just way to resolve a foreclosure process. The standard that is used in our HOA works.

I am available for questions, should anyone wish to discuss this matter further.

Respectfully,

Norman D. Thompson
Oxford Hunt HOA – President
704-820-2936

Jayne Nelson (Rep. McGee)

From: Stephanie Walker [walkermanagementgroup@gmail.com]
Sent: Monday, February 01, 2010 9:45 AM
To: Susan Doty (Rep. Weiss)
Cc: Jayne Nelson (Rep. McGee)
Subject: Developer Responsibility to Homeowners & Making Developers Accountable

Dear North Carolina House Select Committee Members:

It has come to my attention that you all are starting to hold hearings on homeowner association matters. One area that I would like to address is developer responsibility.

A common problem a lot of HOAs are having is making developers accountable for their responsibilities. Developers sign and notarize documents claiming responsibility to the communities they develop. These promises and county documents of public record mean no more than the paper they are written on. To give an example, the current HOA I manage is a 403 home community that was developed starting in 1996. The homes were finished being built around 2001-2002, but it is now 2010 and the developer is still legally responsible for the roads and stormwater system, and they are ignoring their responsibilities. This is a very common problem in this area with some developers.

NC DENR (state stormwater division) cannot get a response from this particular developer about bringing the ditches up to code (by law they are subject to fines) and the HOA cannot get a response from them regarding their responsibility of maintenance of the roads, particularly replacing many lost and damaged stop signs. Numerous attempts have been made via fax, mail, certified mail and actually calling them, and they have all been ignored.

What it all boils down to is the developer can get away with whatever they want with no one overseeing them or forcing them to be accountable for their responsibilities. As the management company for this particular HOA, I have made several attempts to find out who the developers were accountable to. In my thinking, if the county is going to go as far as requiring notarized documents to be submitted making claims of responsibility, then the developers MUST be responsible to someone. Every government entity I have contacted either doesn't know who they are responsible to, or refuse to give me advice on the matter. I called New Hanover County Planning, Zoning & the County Attorney; Zoning didn't know, Planning sympathized with me and gave me suggestions, but didn't take responsibility, and the County Attorney was quite upset being asked the question and refused to give me any kind of legal advice at all. I called the NCDOT, who also sympathized and admitted that the developer IS responsible and they SHOULD be fixing problems, but there was nothing he could do (this particular developer has been in the road turnover process for a year now, and has failed to get the roads turned over to the state 3 different times now) I called the State Attorney and they were the same; reluctant to (and almost nervous to) give me any advice, but did tell me that the court system would have to be the one to settle it. Many HOAs cannot afford to take developers to court, and even the ones that can are wasting their money because these developers should be meeting their obligations. They developed the land and made large sums of money, but then when they decide they've had enough, they just ignore the homeowners and no one is holding them accountable. This leaves homeowners all over

the state and the country with no recourse except wasting large sums of reserves to make the developer do what they are supposed to be doing anyway.

I have personally heard and seen this story and scenario a few times, and I believe it is just the tip of the iceberg. I realize that there are probably plenty of good developers out there that do what they are required to do, but there are plenty that don't. As you all know, land development has skyrocketed in Southeastern North Carolina (within the top 5 in the country), and it is time for the state to take a hard look at what it can to do protect the citizens of North Carolina from the whims of over zealous and unresponsive developers. They should be held accountable for promises they make in regards to their responsibility to the people of the communities they develop, and not leave people with no recourse except to waste large sums of money and time in the court systems to force responsibility. The state or county MUST be more aggressive with this, and it must start at the highest level possible in the form of legislation.

If at any time, any of you feel it would advantageous or it would help the committee delve deeper into problems HOAs face, I would be glad to come and speak or give testimony. I am sure I could also bring a few HOA community members with me also. In the meantime, could you please include this letter with the upcoming meetings to help highlight this very important issue?

Sincerely,

Stephanie Walker, Owner
Walker Management Group, Ltd.

Proud Member of the Community Associations Institute
www.caionline.org

--
Walker Management Group
PO Box 12094
Wilmington, NC 28405

(910) 338-1466 phone
(910) 795-2477 fax

www.walkermanagementgroup.com

AH #2 2-2-10

SPEAKERS AT THE HOA COMMITTEE PUBLIC HEARING
FEBRUARY 2, 2010

PAUL MENGERT

DIANA STARLING

HOPE DERBY CARMICHAEL

TIM SELLERS

JIM SLAUGHTER

HERBERT PEARTHREE

ROBERT BAER

HENRY JONES

STACEY REDGRAVE

FRANK WIEDMAN

LOU DeVITA

KEN DOCKSER

BILL COLYER

PAT EASTERBROOK

JOHN McINERNEY

KEITH LONG

ALIX PORTO

MARIE GRAY

VIRGINIA CROSS

LIST OF SPEAKERS
HOA PUBLIC HEARING, FEB 2, 2010
PAGE 2

RANDY FANN

SPENCER FERGUSON

JIM LAUMANN

MIKE STONESTREET

JOHN QUINN, MAYOR OF INDIAN TRIAL

ROYCE COLES

LARRIE LOEHR

SAMUEL FRANCK

TRACEY GOODWIN

ELLIOT CORNET

JOHNNY CAMERON

LEISA EL-SAHBAZZ

PIERRE GIANI

BRIAN VANLANDINGHAM

ROGER FISH

KELLY ST. CLAIR

GORDON CORLEW

WILLIAM HARGROVE

RON STEPHENS

ADDITIONAL SPEAKERS (Comments within minutes)

Winifred Haywood

Roy Roebuck

Paul Mengert

HOUSE COMMITTEE ON HOME OWNER ASSOCIAIONS
COMMENTS FROM PAUL MENGERT --

February 2, 2010

I would like to thank the honorable members of the committee for hearing concerns of homeowner associations today.

My name is Paul Mengert. I am president of Association Management Group, which manages many associations across the state of North Carolina. My experience includes over 15 years on the national faculty of the Community Associations Institute. Additionally, I have conducted manager and board member training in over 30 states and worked as a contract housing consultant for USAID helping to formulate laws and training association leaders, internationally.

Associations are popular because they offer an affordable housing options, often with amenities, not otherwise available at a given price point. When a developer forms an association, he can often achieve a lower lot cost because most municipalities allow common open spaces that are not buildable, to be counted into density equations. Municipalities also favor associations because many associations provide some services that the cities would otherwise have to fund municipally.

I would like to speak today about two ideas that will seriously help NC associations and their homeowner:

1. Super lien concept – where HOA liens (at least for a certain number of months) would have priority over other liens (like municipal tax liens) This is especially fair since many associations provide "pseudo" municipal services; and

2. Required pre-purchase disclosures.

Both concepts are being adopted by more and more states across the country because they make sense and offer tangible benefits to all parties involved.

Because associations collect monies not for profit, but as a sort of "escrow agent" to pay for municipal type services (such as water, sewer, trash and electricity) and maintenance type services, they deserve the same type of priority lien rights that city or county tax obligations enjoy.

It is unfair to force other association members to fund the debt of a non-paying member. By making the HOA liens survive a foreclosure, a given property will pay its fair share regardless of foreclosure, just like property taxes. More and more states have or are considering such legislation.

The advantage of this to the association is that associations will feel less of an immediate obligation to go after a debt, when they know they will eventually be able to collect.

Under the current law, associations must rush to collect their fees before a mortgage company forecloses or the HOA may loose all amounts owed. Super lien legislation would reduce HOA collection efforts for small amounts. This concept protects associations, helps owners and even helps the lenders by insuring the funds for maintenance are present, to protect their collateral.

The second, concept I encourage you to review is a state mandated front-end HOA disclosure. Every year, we hear of association members claiming they were not told about the HOA before closing, did not know the rules or where to send payments. There is a simple solution to this problem. A disclosure form, signed before closing, as in Virginia, would ensure that buyers know the rule and expectations in advance. If they do not like it, they can opt out before closing. This will reduce everyone's stress and costs in the longer term.

The Super Lien and the Disclosure concepts protect and assist both association and the association members.

Thank you for your efforts on behalf NC HOAs.

Submitted by:

Paul K. Mengert, President
Association Management Group, Inc.
614 West Friendly
Greensboro, NC 27401
(336)273-8600
(336)273-8700 Fax
pmengert@amgworld.com

February 2, 2010

Members of the General Assembly, thank you for taking an interest in the well-being of families and giving us an opportunity to speak with you.

I have several suggestions about how you can amend the Planned Community Act to accomplish what it must have been intended for; protecting the rights of home owners and preserving the funds for the benefit of the property owner and the mortgage holder. **The spirit of the Planned Community Act must be to shelter the weakest link in an HOA and keep families in their homes.**

First, please request from the Attorney General's Consumer Protection Office a copy of the complaints filed against HOAs and property managers over the past 3 years. The letters are sad, scary, and will make you angry. **Reading these letters should leave you concerned for your own property rights and those of your families'.**

The current version of the Planned Community Act has no teeth, **no means for home owners to force board members or property managers to abide by the governing documents.** No punishment for violations that harm the members. Developers, board members, property managers and association attorneys know **the high cost of litigation prevents most home owners from seeking legal advice** or taking legal action. Knowing the Attorney General's office is doing nothing to help home owners emboldens those who take advantage with no fear of accountability. No matter how serious the complaint, all who asked for help from the attorney general received a form letter. * copy included

Second, please permit those of us who have filed a complaint with the AG's office, and other home owners who wish to join us, to form **an advisory panel of property owners to meet with your committee. Understanding how the Planned Community Act has failed those living in covenant communities will help you to amend it. I have personally spoken with many of these citizens and they have great many great ideas I am excited for you to hear.**

Please consider holding Public Hearings in your districts so that home owners from across the state may be involved. **Most home owners have day jobs, so that they can pay their mortgages and their taxes. They cannot afford to hire lobbyists to attend committee meetings and speak on their behalf. Home owners must have a place at this table.**

This CD is a copy of the audio recording of the June 3, 2009, meeting of a committee of the North Carolina General Assembly. I will leave a copy with the

co-chairs so that you might listen to it yourselves. At this meeting Senator Hunt states. *"Anyone involved in HOAs over the years knows that this particular field is ripe with opportunities for mismanagement ... especially with regards to the handling of association funds."*

Henry Jones, who has been instrumental in the development of community law in North Carolina, states, *...I am the attorney for CAI... the Real Estate Commission and Attorney General's office are dealing with a multitude of complaints by home owners about professional managers of covenant communities...so many complaints that something has to be done...many involving* ***the embezzlement of large sums of money that are paid into the associations to maintain the biggest investment people have in their lives being taken and squandered by people who don't know what they are doing... this is a huge public health and welfare problem..***

Some who were previously involved in drafting the Planned Community Act created legislation from which they personally profit. They must step back from the table. We need a fresh set of eyes, a new perspective, home owner involvement.

Thank you.

Diana Starling
PO Box 2947
Raleigh, NC 27602
diana_starling_60@yahoo.com

State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

CONSUMER PROTECTION
Toll Free In NC
(877) 566-7226
Outside of NC
(919) 716-6000
Fax: (919) 716-6050

July 14, 2009

Diana L Starling
P O Box 2947
Raleigh NC 27617

RE: File No. 0909486
Standard Pacific/CAS, Inc.

Dear Ms. Starling:

Our office has received your complaint regarding problems related to your homeowners' association. As our previous letter stated, we do not handle disputes with homeowners' associations and cannot provide legal advice or resolve legal disputes. It appears that you have already hired legal counsel and have already been before a court.

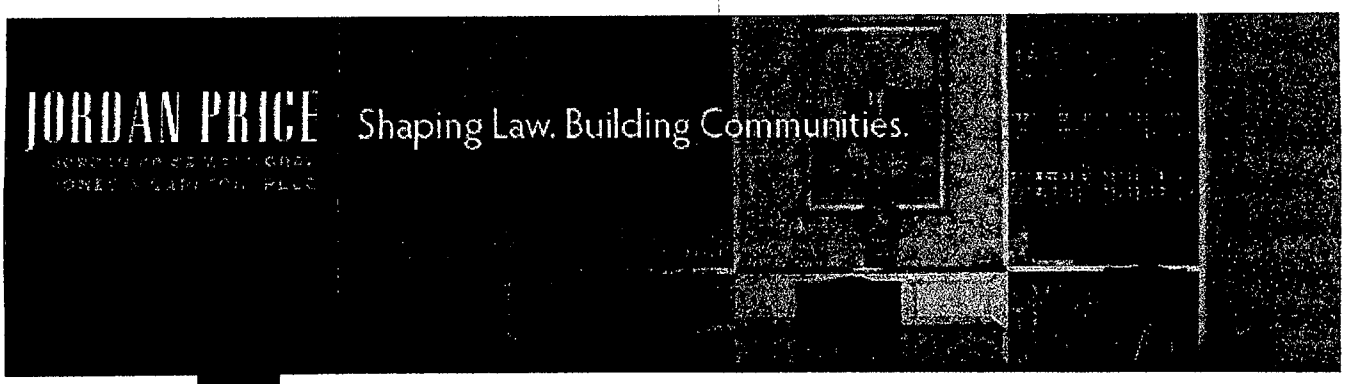
If you believe that there has been some criminal activity on the part of the above-referenced companies, you would need to contact your local district attorney. The Consumer Protection Division does not handle criminal matters. You may also want to let your legislators know of your interest in an agency that would oversee homeowners' associations.

I hope this information is helpful.

Very truly yours,

I did. They were not interested.

Deborah J. Ahlman
Consumer Protection Specialist
CONSUMER PROTECTION DIVISION



Administrative Law
Appellate Law
Banking and Finance
Business and Corporate Law
Community Association Law
Construction Law
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Municipal Law

Community Association Law

The firm has represented condominium and homeowners associations for over 30 years. We currently represent over 800 associations in the Research Triangle and eastern North Carolina. Our attorneys in this practice area have been instrumental in the development of community association law in the State of North Carolina. Our lawyers have represented homeowners associations and trade groups before the highest courts in North Carolina in cases of sweeping importance to the ways in which condominium and homeowners associations operate.

Our services and expertise in this area include the collection of maintenance assessments, foreclosure of assessment liens, architectural enforcement litigation, developer disputes, drafting and amendment of covenants, bylaws and other legal documents, and advising boards of directors and management on all aspects of operation of these associations. We have experience with self-managed homeowners associations as well as property management companies that do business throughout the State of North Carolina.

Our lawyers frequently speak at seminars and lecture on the management of non-profit entities, enforcement of use restrictions and the statutory frameworks which govern condominium and homeowners associations in the State of North Carolina. Our team of lawyers in this practice group have diverse skills that encompass the ability to guide communities through transactions while complying with the law, and representing such communities in court in various disputes that arise in the day-to-day operation of these communities.

Lawyers:

Hope Derby Carmichael
Jonathan P. Carr
Brian S. Edlin
Jeffrey Goebel
Henry W. Jones, Jr.
Joseph Propst

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YAHOO! MAIL Classic

The House Select Committee on Homeowners Associations Saturday, January 30, 2010 11:24 AM

From: "jonl9@suddenlink.net" <jonl9@suddenlink.net>
To: "Susan Doty" <weissla@ncleg.net>, "Jayne Nelson" <mcgeela@ncleg.net>

Dear Ms. Doty, Ms. Nelson,

Your help in getting my note before the Select Committee currently holding public hearings on Homeowners Associations would be most appreciated.

I have served on Home Owners Association Boards of Directors in two states, in California as board treasurer and most recently in North Carolina as board president. California at that time had some 92,000 Home Owners Associations and from experience had grown a body of law to deal with Common Interest issues. The main piece of legislation was and continues to be evolving as the Davis Sterling act which outlined the responsibilities and liabilities of a Home Owners Association Board of Directors and in doing so provided protection in many areas for the property owners of that Association from negligent or even malicious acts of a majority on a Home Owners Association or Common Interest Development Board of Directors.

I recognize no such definitive and protective legislation here in North Carolina which could help avoid expensive litigation.

It appears to me that the only recourse a member of a Home Owners Association has is litigation on virtually all issues. I would suggest a more orderly approach should evolve in North Carolina statute defining clearly the obligations and liabilities of a Board of Directors thus providing protection for the member of the Board, but also providing a clear path of resolution for members of the Home Owners Association before the only recourse of resolution is litigation. The concern also exists that Judges may not be familiar with Common Interest case history as opposed to clear statute and there is no assurance a full weighting of the issues can be obtained.

I believe a climate that enforces liability even at the expense of the negligent or malicious Board member would help to prevent issues.

I recommend the select committee should acquire experience from other states such as California and learn from their experience while evaluating legislation here in North Carolina.

Covenant violations are civil violations, the state's Attorney General does not appear to have responsibility to resolve these issues. I would recommend that North Carolina define a place of review or mediation of civil issues regarding Home Owners Association Boards and the Association members before litigation becomes the expensive solution of last resort.

We have issues here in our community including a created and defined $1,290,000 liability. Two past presidents of this Association and a number of Association Members retained a lawyer, Mr. Henry Jones, who I am sure is known to the Select Committee. He helped us understand that this community has problems of liability from negligent attention to the provisions of the Covenants (Declaration) and the only path to get the issue on a path of resolution is very expensive litigation. Our group offered, at Mr. Jones suggestion, to pay the costs of a mediator on the issues, the board ignored the issue. The financials around the problem continue to deteriorate in the year since we've seen Mr. Jones; means of defining and recommending resolution should be available before a court has to make a decision.

North Carolina is blessed in many ways. Located in the transition zone between temperate and and sub tropical climate zones, located between the the magnificent mountains in the west of this state and matchless coast in the east, Common Interest Developments offering common amenities here should be a natural hold for North Carolina residents and a draw for retired people who come with their pensions, assets and health

insurance. All adds to the local tax bases, all use local restaurants and other businesses injecting cash flow into local and state economies. Beaufort County has benefited from all of this from the several Common Interest Developments here.

North Carolina should strive to be the ideal destination and residence for those wishing to benefit from Common Interest Developments. If the state gets a reputation for badly run Common Interest developments, then the benefits will flow elsewhere.

Respectfully,

Jon Larson
103 Neuse Drive
Chocowinity, NC 27817

(252) 940-0222

Kelly Van Norman
7616 Satinwing Lane
Raleigh, NC 27617
kelly_van_norman@yahoo.com

My husband and I are first-time homeowners in a community in Raleigh, NC. We purchased our home four years ago, and have had constant problems with the board members of our HOA. Yes, our board members are elected by the homeowners in our community, and no, they do not follow the governing by-laws because there is no way to enforce that they adhere to these regulations. Here is a short version of the list of actions taken by the board that are against our community by-laws:

1. Can not account for missing funds from our community HOA assessments
2. Unlawful removal of a board member who demanded that fellow board members follow community guidelines
3. Failure to post community meeting times and minutes from subsequent meetings
4. Failure to post board members' contact information (when I did find an e-mail address for a board member, he threatened to sue me if I ever contacted him)
5. Failure to ratify the community budget

The list continues far beyond what would fit on this page. These infractions represent only a few years in only one community. How many tens of thousands of other homeowners encounter issues that are similar or worse in their own communities?

As I see it, the main problem with the current structure of HOA communities is the homeowners have no control over their own property. A majority of homeowners do not have time to serve on a HOA board or attend meetings. This may not be ideal, but it is reality. The board members that are elected are usually in their positions for years because their seats are rarely challenged. This gives them carte blanche to spend our money and invade our property as they wish. The only way to force them to govern according to the by-laws is to take legal action against the board, and very few people have the money for that. Even then, the current laws are written to protect property managers, builders and board members, so a lawsuit against them is just a waste of money and time.

The solutions to this problem are fairly simple. Homeowners should have the option to be part of an HOA or not. An advisory committee of homeowners should be formed to help legislators create laws that protect homeowners. There needs to be a council that homeowners can go to when their money and property are being exploited by the HOA board. In order to encourage economic growth via home sales, North Carolina needs to assure potential homebuyers that their property will be protected. It is encouraging that this committee is willing to listen to concerned homeowners, and I hope that swift action is taken to defend our homes and communities.

Mary Jane Poore
7806 Spungold Street
Raleigh NC 27617
Poorehouse1@yahoo.com

February 1, 2010

Dear House Select Committee on Homeowner's Association

As a concerned resident of Alexander Place Townhome Community, I have become a discouraged homeowner because there is nothing you can do to hold the Board of Directors accountable. Not even paying for an attorney, because the Judges do not want to get involved in neighborhood disputes. I don't blame them. There should be some protection for homeowners besides going to court.

We have a Board who has blatantly not followed our bylaws, such as no notice of Board meetings, no minutes taken or approved in two years, no Budget for 3 years has ever been approved, no annual meeting or giving us very short notice of those meetings. We have director's who have had liens on their property for non-payment of monthly assessments and chose to run for office knowing this and not disclosing. These Board members have been vindictive to those neighbors asking for accountability for the above, to include calling my employer and lying to try to get me either in trouble or fired. False police reports have also been filed on those residents trying to get the Board to follow our bylaws.

I believe that the answer would be for the Property Management Companies to hold Neighborhood Associations accountable, by attending each of the association meetings and ensuring that they are following the protocols and bylaws. If the directors do not, then the Property Manager would be responsible for holding the Board accountable for following the rules. I feel all Property Management Companies should be licensed and made responsible for the properties that they manage. They could provide training and be there to advise new directors on policies and bylaws to ensure that they follow guidelines to protect the property values of homeowners.

As a concerned homeowner, it has been very frustrating to go to meetings knowing that they just do whatever they want. I realize that this does not help resolve our issue, but when no one wants to hear about how our bylaws are not being followed, it is always a negative, confrontational meeting. As much as we pay our property manager, they

should earn their pay and manage the properties according to the property bylaws. Then lawyers would not have to get involved or neighbors move out due to frustration.

Thanks for listening.

Mary Jane Poore
Concerned Home Owner
Alexander Place Townhome Community

Rep. Jennifer Weiss
NC House of Representatives
300 N. Salisbury Street, Room 532
Raleigh, NC 27603-5925

My name is Mark R. Richards from Charlotte NC and I live in a development called Morris Farms. Morris Farms consists of 363 homes with an average price range between 100K – 125K. Over the last few years, we have witnessed numerous accounts of HOA mismanagement of member's funds as well as major abuses of power. We have made numerous attempts to access and review the association's financial records and have been unsuccessful on all accounts. We have asked numerous questions and received very few answers, most which have been incomplete and sometimes condescending.

Morris Farms is now being managed by a company named CAM, Carolina Association Management. I personally have evidence that CAM conspired with our HOA board to fix the outcome of the last election of the board of directors. I have evidence that our board president used association funds for her personnel which was used against us in the last election. This board has threatened people with fines for so called violations that fall under the jurisdiction of the county, clearly overstepping their boundaries.

The Board and management company are out of control and there is no help available for the homeowners. Our only representation is a 15 minute open floor to the members at the annual meeting. However, if the meeting runs late, we do not get that 15 minutes as we have to vacate the rented room.

I have written to the Attorney General's office and received a standard form letter in response stating that there was nothing they can do, I have written to the Secretary of State's office and received a standard form letter in response from them as well stating that there was nothing they can do. They tell us that we should get a lawyer on our behalf but what sense would that make? We would be paying money to an attorney and the board would hire an attorney using the association funds. Therefore, we are paying for both sides.

I have records of where the board and management company falsified financial statements to hide money and it doesn't take a financial expert to figure it out. This past year, between 45-75K has been suspiciously moved on and off of financial statements.

The bottom line here is that the members of our association have been denied every option that our by-laws provide us and we have nowhere to go to right this wrong. We've been told to vote them out and when we tried, they manipulated the outcome of the election. In past elections, the board actually took the votes out of the meeting and into their homes to count them. We asked to review the votes and proxies for the last election and have been continuously been stonewalled.

The State of NC needs some kind of group, committee or board that can step in and force these boards and management companies to comply with the By-laws of each association. Being that HOA's are non-profit organizations registered under the Secretary of State, I'm wondering why they do not govern the rules of these groups.

Many homeowners are actually fearful about voicing their opinion as they fear for reprisals from the board in the form of harassment and threats of fines for anything they can find or make up. I have knocked on doors and spoke with many of these people, some of which are out of work, cannot pay their mortgage and therefore have not paid their dues. They have been threatened by the Board with

liens and foreclosure. This is absurd because this community's annual budget is around 45K a year and the Association has over 100K in assets and some of it in CD's at two different banks.

I am in the process of putting a package together that will point out all of the allegations I speak of above. This will consist of financial statements, emails, letters, and anything else I have to prove the allegations. I am sorry I don't have it available for the scheduled hearings today as I am a little late in getting involved in this matter.

We need HELP, we need REPRESENTATION! We know we're getting ripped off and there seems like there's nothing we can do about it. This just furthers the boldness of the Boards and Management companies and the people have had enough. We want to be heard and represented.

I will forward my information package to your office very shortly but I wanted to be heard and represented in any way shape or form at today's hearing.

Thank You,

Mark R. Richards
Member of the Morris Farms HOA
8714 Sweet Sage Lane
Charlotte, NC 28227
HM: 704-573-1355
Cell: 704-301-8704

Dear Mrs. Starling:

Thank you for contacting me in regards to the House Select Committee on Homeowner Association public hearing held on February 2, 2010.

I understand that my presence at this meeting would be highly imperative, but unfortunately, given the short notice and distance, I am unable to attend.

I too have been a victim of HOA, even though my situation changed for the better in October 2009, when a new management company took over. I do realize that there are still many helpless homeowners out there who need to be defended, and I appreciate your courage to speak out for all of us.

My personal turmoil with HOA started some 4 years ago, about 5 months into buying a property that is "managed" by board members of Shadow Valley Homeowner Association, consisting of some of my fellow neighbors.

When I bought this property, the finances were in relatively good standing, but this changed drastically shortly thereafter, when the president of SVHOA hired an acquaintance to perform some roof repairs. The association failed to check on the contractor's insurance, and at the time of repairs a small hurricane came through Piedmont Triad, resulting in damages greater than USD 90,000. Our exterior insurance provider covered the damage, but it eventually dropped us as we were unable to pay down the large collateral. The SVHOA signed with another insurer, but the premiums increased by 200 %.

A couple of months later, our water was shut off by the city of High Point, and the SVHOA had to admit to us that they were more than USD 10,000 in default and dues would have to be raised from USD 130 to USD 150. I would like to mention that our community has 52 two story townhomes. (They are condos in reality, but the law allows two story buildings to be called "townhomes". Yes I too, upon closing, was unpleasantly surprised when I learned that I had bought a "condominium".) Note that we do not have either tennis court, swimming pool, or a club house.

The later incident was the point at which I realized it was about time to start asking questions. I have sent 4 certified letters to the association, requesting various documents to which I have yet to receive a single response. In the summer of 2007 a management company took over, and from them I was later able to obtain some documents, however those were mostly years old documents and provided old and therefore useless information. I was not able obtain any current documents as they were "nowhere to be found". Under this new management our water has been shut off once again and homeowners were assessed. For the majority of spring and summer of 2009, we were provided with landscaping about once every 2 months and only when the grass was so tall that it would conflict with city ordinances. However money for those services were being collected on a monthly basis as usual. I have only managed to start to receive monthly financial statements since May 2009 due to the fact that I have made good on

my promise and opened an escrow account where I have started to deposit my monthly dues. For 3 years a known problem with the sewer backing up (which potentially qualifies as a health hazard) has yet to be addressed. Meanwhile, buildings with units of respective board members received upgrades such as new shutters, and board members compensated themselves with USD 600 per annum. My account is just the tip of the iceberg of horror stories some homeowners go through.

As mentioned above, in October 2009 a new management company took over. We are very fortunate to be managed by this new company, as they comply with NC law and I am able to access most of the records at any time upon request. However, I am very well aware that this may easily change should our board members elect a new management company.

Upon 3 years of extensive research I was only able to locate NC General Assembly SESSION LAW 2005-422 HOUSE BILL 1541§ 47F which to a limited extent regulates Homeowners Associations, however many of the provisions were repeatedly ignored by HOA's as these HOA's are understandably confident that they never will be held responsible for their actions given the fact that one real estate lawyer asked me for USD 550.00 for a single letter, only to request access to records. At www.ahrc.com numerous horrific stories from frustrated homeowners that decided to state their cases against HOA in courts and were in many instances punished themselves by court decisions can be found, further discouraging anyone weighting the option to sue their HOA's. To my knowledge there is currently no agency protecting homeowners trapped by their HOA and some free resources are available but limited to those who fall bellow poverty level.

Please regulate HOA's and help us homeowners keep our homes free of abuse from HOA's.

Thank you,

Zuzana Vichova
2216 F Shadow Valley Road
High Point, NC 27265

30.January 2010

YAHOO! MAIL Classic

Public Hearing of The House Select Committee on Homeowners Associations

Friday, January 29, 2010 2:43 PM

From: "Dan Bergbauer" <bergbauer@suddenlink.net>
To: "Susan Doty" <weissla@ncleg.net>, "Jayne Nelson" <mcgeela@ncleg.net>
Cc: "Diana Starling" <diana_starling_60@yahoo.com>
1 File (31KB)



Letter to Re

Friday, January 29, 2010

The House Select Committee on Homeowners Associations

Attn: Ms Doty and Ms Nelson, Committee Assistants

I have recently become aware of the second public hearing of The House Select Committee on Homeowners Association, scheduled for February 2, 2010, in Raleigh. Since I will be unable to attend, I have attached a statement expressing my concerns that homeowners have little recourse in trying to get a board of directors to comply with and enforce the Covenants. Although the Covenants usually have a provision that states that a homeowner may enforce the Covenants if the board fails to do so, it usually requires taking legal action. In reality, this is impractical because the cost is generally prohibitive, and, if the case gets to court, judges are often not sympathetic with homeowners. As you also probably know, The Office of the Attorney General will not get involved in these disputes. There must be a way that is practical and affordable for homeowners to be able to challenge the unilateral actions of the boards that are in conflict with the Covenants or State statutes.

Please contact me if any questions.

Dan Bergbauer
252-940-1186

Statement for The House Select Committee on Homeowners Associations

Jan 29, 2010

Over the past 12 years, I have been a member of 2 different homeowners associations (HOAs) having mostly retired members, one in Moore County and one in Beaufort County. With both HOAs, the boards (comprised of home owner members only) have acted with virtual impunity in deciding how and when to apply and comply with the Covenants and other governing documents. In neither HOA was there a disputes clause in the Covenants. Trying to resolve disputes involving failures of the board to comply with the governing documents usually comes down to 2 options: elect new members or take legal proceedings. For the former, new members usually get subsumed into the board brotherhood and protect the previous board largely because of fear of becoming knowledgeable and thereby involved with the uncertainties, complexities, and legalities. For the latter, very few homeowners have a spare $50,000 or more, and judges have the reputation of not wanting to be bothered with wasting valuable time on what they consider such relatively petty matters.

On the more complex and controversial issues, boards are reluctant to get advice from an attorney largely because of the expense and not wanting to have to live with the advice. When a board does obtain a legal opinion, moreover, the board usually will refuse to make it available to the membership, claiming it to be privileged. I am also reminded that knowledge is power. Most times, the opinion will be very constrained based on limited information and direction usually supplied by the board president. In this way, the board is often able to manipulate the attorney to produce an opinion that favors the position of the board and not necessarily to the best interest of the membership.

A year ago, I sent a letter to the Attorney General expressing concern that successive boards of my HOA were involved in possible fraudulent scheming of NC statutes with another party and not protecting member rights. The Attorney General's Office declined to get involved.

A small group of us have tried without success for a number of years to get the board to enforce the terms of a lease contract (to operate and maintain a limited common element) that required compliance with certain provisions in the Covenants. This cost us thousands of dollars in getting legal advice from a prominent Raleigh attorney. The successive boards, however, have stonewalled and even tried unsuccessfully to amend the Covenants.

Our Covenants has a Rules paragraph that allows the board to make rules unilaterally for the use of any property to protect the value of lots, the aesthetic qualities of each community, and the tranquility of the owners. All such rules, moreover, are enforceable as though set out within the Covenants. In effect, this allows the board to override the Covenants.

My HOA has rules and procedures for forcing members to comply with the Covenants but nothing for forcing the board to comply. <u>What is sorely needed for the Covenants is the requirement for a disputes clause</u>, which would be used to resolve significant disputes between members and the board by involving a disinterested party with some form of mediation and/or arbitration. When a board refuses to participate, however, to what State agency can an appeal be made to require enforcement?

Submitted by: Daniel Bergbauer, 102 St Johns Ct, Chocowinity, NC 27817 252-940-1186

YAHOO! MAIL Classic

re: House Select Comittee on Homeowners Associations meeting 2/2/2010

Friday, January 29, 2010 7:02 PM

From: "Brian Vanlandingham" <brianvanl@hotmail.com>
To: diana_starling_60@yahoo.com, susan.doty@ncleg.net, jane.nelson@ncleg.net

This email is a follow up to a phone conversation I had with Diana Starling on 1/30/2010, inviting me to share some of my experiences in dealing with our own Homeowner's Association. In my case this association is Sterling Park Townhomes, in South Raleigh.

To be brief, we have found that homeowner's in the association are completely at the mercy of our Board of Directors, and have, for any practical purposes, no enforceable legal rights. We have seen our Board enforce our covenants and bylaws where it serves their own purposes, and feel free to completely ignore them when they do not. There is nothing the homeowners can do about it.

Even the most basic functions of the nonprofit corporation, such as having to have an annual meeting in a timely manner where homeowners can be heard and hold elections and vote for new Board members, and the requirements to provide an annual financial statement

to the homeowners exist only at the pleasure of the members of the Board.

Quoting to our Board our own bylaws, and even North Carolina General Statutes purporting to regulate
Planned Communities and Nonprofit Corporations is simply ignored by the Board when it pleases it to do so,
knowing there no action the homeowners can afford to take.

In my own case I spent months going around to various agencies in downtown Raleigh trying to find someone
somewhere who might look into what what going on in our Association. I found no one willing to listen.

We found that even hiring an attorney to enable us to get a look at our financial records was useless.
When we arrived to look at the records we were simply told that the records we were looking for could not be located, and there was nothing we could do.

Homeowners find themselves locked into a position where there is no accountability in how the community is run, no one willing to listen, and no way out save to sell their homes and move.

I encourage the House Select Committee on Homeowners Associations to find some way to regulate
these associations and put teeth into the General Statues regulating them.

I will make every effort to attend the Committee meeting on February 2, and will welcome any chance to have these comments entered into the record.

Brian Vanlandingham
2621 Sterling Park Drive
Raleigh, NC 27603
919-834-6674

Hotmail: Trusted email with Microsoft's powerful SPAM protection. Sign up now.

Date: February 1, 2010.

To: House Select Committee on Homeowners Associations.
Representative Jennifer Weiss
Representative William McGee

Cc: Diana Starling

From: Members of the Fairfield Harbour Property Owners Association.
1822-6 South Glenburnie Road, PMB #222
New Bern NC 28562

Dear Committee Members,

We are members of the Fairfield Harbour Property Owners Association in New Bern, North Carolina. Our community was established in 1972 and now has approximately 2825 members. We are a community with both retired and working families. Our Property Owners Association is a Non Profit Corporation operated by seven (7) Board members.

Over the last five (5) years our Property Owners Association Board of Directors (POABOD) has been under the control of a group of intervidiuals that are out to change our community. They have made rules and regulations on their own authority and have refused the membership the opportunity to expand their voting rights. They have created documents that charge fees and impose rules that do not appear in our Declarations of Restrictions to accomplish their agenda. They ignore the bylaws and the Declaration of Restrictions because they get in the way of doing things. The following is part of a legal letter the POABOD received: "Most Board of Directors of most Associations are given the authority to adopt rules, regulations and guidelines by statute (47F-3-102 (1)) or by specific provisions in bylaws or restrictive covenant. The Board at Fairfield Harbour has no such general rule making authority."

The POABOD and Property Control Committee (PCC) have expanded our three page Declaration of Restriction section on building requirements into a fifty (50) page builder's application. This application dictates that the builder must do what the PCC requires, but if a builder is sued due to following their rules, the POABOD and PCC are to be held harmless. The application imposes a road maintenance fee, which is not mentioned in our Declaration of Restrictions. The Road fee has increased 100% over the last 5 years.

In 2009 the entire PCC resigned under what was a power struggle between the POABOD and the coequal PCC. The POABOD presented a "Document of Understanding" to the PCC. The PCC rejected the "document", and resigned stating that it shredded the Declaration of Restrictions.

In 2005 our Board presented a Declaration of Restriction change to restrict Boats, Trailers and RV's from being kept in residential yards. Following what was a very close vote, the communities billboard results changed over night, that put suspect on the results. It took over 3 years to get the votes recounted because the POABOD refused access to them. Only under threat by legal council to litigate the matter was ballot access finally permitted. A review of the ballots disclosed that the late votes were counted in the totals. A letter to the POABOD outlined these results along with documentation. The reply by the POABOD stated that "late does not have to mean late". The POABOD minutes also reflect that the ballot box was opened to " see how the vote was going".

The Annual Meeting held in May of 2009 was the first occasion that sign in sheets were provided to establish a quorum. We believe that the only reason this initial establishment of a Quorum occurred was that our group demanded to present a petition to the POABOD at the meeting. The POABOD has always been required to establish the quorum prior to installing new directors. We could have challenged the sitting board members because they had never been properly installed.

No one knew what a proxy was for and none were ever sent out. One half of our membership does not live in our development and many are out of state owners.

Currently our POABOD is on a quest to purchase the Amenities within the development. The property owners over the years have been told that the POABOD can not purchase the amenities. Our Declarations and Articles of Incorporation do not allow for the Property Owners Association dues to service debt. The Board has looked for two years to find a legal opinion that would state, "you can buy the Amenities". This venture will cost over 6 to 10 million dollars. The POABOD had a five-year projection for the dues that contained a 59% increase without the purchase of the Amenities. The property owners have no control over the POABOD spending, as a previous Board of Directors removed a budget approval provision by members from our bylaws years ago.

We have formed a group called Fairfield Harbour Property Owners Reform Team or FHPORT. Last year we petitioned the POA Board for bylaw changes to get more voting rights and spending caps. Thirty (30%) percent of the membership signed the petition. That was 903 voting members asking for a chance to vote on the changes. The POA Board refused to allow a vote and dismissed the petition.

Our group's members have contacted the following North Carolina Officials:

1) North Carolina Attorney Generals Office
2) North Carolina Secretary of States Office.
3) North Carolina Real Estate Commission.
4) Federal Government Representatives.
5) State Representatives
6) Local Government Representatives

All the Agencies and Representatives have said they could not help and that we needed to hire a lawyer to have our rights enforced. Most lawyers advise that to take on the Association you need to be ready to spend upwards of $100,000 dollars. The current law and State Government Agencies that control the Non Profit Corporations which most Homeowners Associations operate under are generally ineffective. Alternatively these agencies may not want to enforce the statutes. As a result, Property Owners are left fending for themselves against an organization that has virtually unlimited resources produced by our own dues with which to defend itself. All Homeowner Associations have insurance policies and we have been told "if you don't like it sue us". We as Property Owners clearly need help from our legislators and from State Agencies to protect our Rights. Laws need to change or new ones created to protect property owners and members of Associations from unscrupulous Homeowner Association Boards. Though our group FHPORT has organized in our community there are those who ridicule and demean people that take a different point of view. Challenging the powers of the establishment is a difficult undertaking. Any and all help would be appreciated and if you need to contact us please do so.

Sincerely,
Members of the Fairfield Harbour Property Owners Association and Members of FHPORT Inc.
Tom Cherney, Rich Marshall, Mandi Johnson, Tony Morello, Pat Byrne, Rich Edwards
252-617-6276

YAHOO! MAIL Classic

home owners versus home owners associations

Saturday, January 30, 2010 4:55 PM

From: "Maryallen Estes" <estesmaryallen@yahoo.com>
To: diana_starling_60@yahoo.com, susan.doty@ncleg.net, jane.nelson@ncleg.net

The House Select Committee on Home Owners Associations:

This is my story about the Home Owners Association in Mountain Heritage Estates, Burnsville, North Carolina.
In 1984 my husband and I purchased 5 and 1/8th acres of land in Mountain Heritage Estates. Our original covenant made no mention of a home owner's association or assessments or a lien on our property if we didn't pay an assessment.

In 1988 we built the home I am presently living in. In 1991 we moved here permanently. In all those years, we have NEVER paid any assessments. In 2007 the land around us was purchased by the Mountain Lifestyle Development Corporation. They sent me documents to sign which contained requirements that I pay assessments and stated if I didn't pay, I would have a lien put on my property. I REFUSED TO SIGN AND HAVE NEVER PAID ANY ASSESSMENTS. I DO NOT BELONG TO THEIR HOME OWNERS ASSOCIATION. However, they sent me a bill for $334 to be paid every three months for their cost of doing business. The yearly fee would have been $1336. Even though I consulted an attorney who told them I was not subject to the Planned Community Act because I bought my land before 1999, they continued to send me bills and harass me.
Their attorney sent me a Claim for a Lien dated June 5, 2009. I consulted another attorney who sent their attorney, Robert Phillips, a nine page decision by the N.C. Supreme Court decided on in 2006 in favor of the Home Owners against the Home Owner's Association. The case was similar to mine. My attorney, Sam Craig, called Mr. Phillips and asked why he thought my case was any different from the one that the N.C. Supreme Court decided on. He replied he would have to consult his clients, MLDC. Well, to this date we haven't heard from the MLDC or the attorney.
I had been told that after six months if the claimants had not set a court date to prove they deserved the lien, the document is null and void. The six months was over Dec. 5th. To make sure this lien was no longer in effect, I visited our clerk of the superior court, Warren Hughes, who informed me the document, in deed, was no longer valid. He also added I didn't have to do anything that it would be null and void automatically.
In spite of all the above, the Mountain Lifestyle Development Corporation continues to send me assessment bills. Now they ask $250 dollars every three months. I ignore every bill sent. First of all it is exorbitant for what they do which is scraping the road every so often and blowing leaves off the road in the fall (a ridiculous waste of time and energy). When we had the last snow storm on December 18th, no one showed up to scrape the road. I paid a neighbor $100 to clear one mile of snow.

On Dec. 4, 2009 the gate to Mountain Heritage Estates would not open. I was trying to get out of the place to go grocery shopping as I had been out of town for two weeks. I returned home and told my son I couldn't get out. He went down to the gate, loosened two bolts and the gate opened. Long story short, the powers that be never fixed the gate until May, 2009!

The gate wouldn't close from the outside on Nov. 28, 2009. So far it still hasn't been fixed. Personally, I don't care if it ever closes again. I was never asked if I wanted a "gated" community in the first place. In fact I have never met the development people face to face. I only talked to one of them once. He was extremely rude. You see, I and my son are the only permanent residents in the Mountain Heritage Estates. I am eighty three years old and I don't need this kind of harassment. Home Owner's Associations are just a way to take home owner's rights away from them and relieve the county from maintaining the roads.

My advice to anyone buying property, READ THE FINE PRINT, DON'T SIGN ANYTHING UNTIL YOU'VE READ IT AT LEAST THREE TIMES! If it sounds fishy, don't sign at all!

Please correct the abuses of these Johnny Come Lately buyers who try to impose restrictions on long time residents.

Thank you for your attention to this matter,
Sincerely,

Maryallen Estes, LCSW, Retired.

February 1, 2010

Susan Doty
Jane Nelson

Subject - HOA Problem

Good Morning Ladies,

I was sent a email from Diana Starling regarding problems with HOA. She asked that I send you an e-mail with our problem.

Our problem started a few years ago with Eagle Ridge HOA and Talis Management. We had paid our dues late (I really hate paying these dues because you should not have to pay to live in a decent neighborhood) Talis had added late charges and interest of over $200. I had paid that charge over the HOA dues. Payment had been posted the first week of the New Year, two weeks later Talis added attorney fees of $500.00. At this point I became very upset and got a attorney. We took our case to court and won (They had to remove our lien on our home) The letter we received from the Attorney did no state that this letter was a intent to collect a debt so there for they were in violation of a Federal Law that protect the people.

Talis and Eagle Ridge continued to add interest and attorney fees to our account. The amount they said was owed for over $1200.00. I had tried to contact our President and Vice President regarding the problem. I had talked with Eagle Ridge VP and to this date he has never contacted me regarding the issues.

We have gone back and forth to court and finally received a order from the courts for Eagle Ridge and Talis and Nelson Harris to remove the amount they said we still owed them. The Judge told Nelson Harris that his charges were not legal, only the courts tell the attorneys how much they are allowed to charge.

Our account has been put to -0- and a credit was posted to our account. I have asked Eagle Ridge HOA have you received a check from Nelson Harris for the amount that was credited to our account, NO ONE IN OUR HOA WILL ANSWER MY QUESTION. OUR HOA WILL NOT ANSWER AND OF THE QUESTIONS I HAVE ASKED.

I can say that since our legal problem the changes that followed – Talis no longer had Nelson Harris as their attorney – Also Eagle Ridge has changed Management company.

Our attorney has stated that everyone needs to pull together and file a class action lawsuit .

This is outline of what we all went through and the homeowners need to be in control and be free to fight and win. HOA's make it so that when you live in a HOA community its like living in a dictator community.

I will attempt to be there tomorrow, if you have any questions for thoughts please E-mail me back.

Thank-You for being there for us homeowners.

Gina Brooks
246 Mediate Dr
Raleigh, Nc 27603

YAHOO! MAIL Classic

Statement of Royce R(I have revised this after I found my notes.I will read from this if allowed to speak)

Saturday, January 30, 2010 11:50 AM

From: "Royce R. Coles" <lotawata@embarqmail.com>
To: "Diana Starling" <diana_starling_60@yahoo.com>

Statement of Royce R. Coles in Regards to the Problems of Home Owners and Property Owners Associations.

To: House Select Committee on Homeowners Associations.
Representative Jennifer Weiss, Co-Chairman
Representative William C. McGee, Co-Chairman,

Dear Congressmen,
It has been a long time since 1944 when our federal government established the first planned subdivision of homes that incorporated deed restrictions on the homeowners in Levittown , N.Y. Even though these restrictions were minor then, things have grown to be in some cases so restrictive in homeowners and property owners associations in this country that they have become impossible to litigate resulting in one Chief District Court Judge, who ruled against an association not having the authority to asses fees, as in the ruling of Judge Christopher Bean of Currituck County, N.C. (see attached).

With that said, many polls show that 65 to 78 per cent of homeowners are satisfied with their homeowner and property owner association agreements. However, this leaves 22 to 35 per cent of Americans in these agreements under the hammer of what they believe to be unfair and unjust agreements and many feeling these same agreements are not even adhered to by the governing bodies which administer these restrictive CC&Rs' (Covenants, Conditions, and Restrictions). For example, in the property owners association where I live, our dues were raised in order to increase funding to bank investments which have thousands of dollars in them and have a continual flow in and out of monies, which even though a one line item in our budget, we never see the actual cause and effect of the money. Many believe this is a violation of the Planned Community Statute 47F-3-114. It is impossible to get an audit without the assistance of a lawyer and this leads to supposition and discontent. The current Attorney General for our state has eliminated himself from helping homeowners and property owners because it either does not serve his best interest or he finds the complaints trivial. I have written to him twice and he has taken himself out of the loop as a viable recourse or to even look in to the matter.

It should be understood that these associations and planned communities provide a service and many homeowners ignore the bad and dwell on the good especially the security and amenities provided by a functioning association even though some are stagnant and will eventually die from attrition or be taken over by outside factions because of lack of participation by its members or by direction of local officials due to problems internal to the associations. If for the reasons already stated and many yet to be raised, **this is why North Carolina needs a "Homeowners and Property Owners Association Bill of Rights".**

Regardless if an individual or family lives in a common interest development or a planned cooperative or condominium a "Bill of Rights for Homeowners and Property owners in Associations and Planned Communities" should have the following but not limited to these items.

1.) **Opting Out** of any association or planned community should be the individual right of any property owner in those associations and communities where the only binding boundaries for all members are amenities (swimming pools, beaches, playgrounds, clubhouses, boat docks, ect.). Then opting out is an option based on state law if the family or individual chooses not to use these amenities. Notifying the association in writing should be sufficient and dues should be suspended. **However,** associations and planned communities that have imposed deed restrictions are bound to the owners and the owners bound to the association simply by an individual or family purchasing property within that planned community. Again if assessed fees are for the sole purpose of upkeep of amenities, opting out of paying dues should be allowed or dues amended if a family chooses to not use those amenities but they are still part of the association for voting and membership.

2.) **Amenities** are for the sole use of members of associations and planned communities and will not be given or sold to outside companies or individuals including politicians, lawyers, local public servants, and non member families.

3.) **Voting** is always in question when it is done by a board that might not be trusted by some or discrepancies have been noticed in past voting. Since associations must follow state laws in forming their guide lines then voting on deed restrictions, covenants, and by-laws should be restricted to state laws and controlled by the County Elections board. Notification of voting on issues will be published in local paper (s) by the controlling board or officials for an association 30 days prior to voting and ballots and information mailed to members 30 days prior to voting and completed votes mailed to the Elections Board. The Elections Board will make the results know in local paper (s) and by letter to the controlling board within the association or planned community. This should be an example of our tax dollars working for us.

4.) **Audits** requested by any member of an association or planned community should be adhered to within 15 days and conducted by the member or their chosen representative with the association or planned community treasurer or accountant present. Putting an annual audit on line for all members to see might be a viable solution.

5.) **State Attorney Generals Office** must be a controlling entity in accordance to state laws when violations to deed restrictions and established covenants are not adhered to and members have sufficient complaints. Keeping aware of graft and embezzlement of funds, voter corruption, misuse of funds, and the fraudulent foreclosure of any member's property should be the Attorney Generals priority and that offices responsibility. Members should be able to contact the Attorney Generals office for a statement and if need be for a recourse of action to be established. A "Hotline" should be made available. Many problems could be taken care of at this level.

6.) **Buyer awareness** must be made available to families and individuals who are purchasing property within an association or planned community. Real Estate agents must be required to go over the deed restrictions, covenants and by-laws with all buyers and answer questions that may arise prior to purchasing and not after. It must be understood and buyers made aware that to purchase property in a deed restricted planned community will require individual responsibility and compliance to the association and your neighbors not usually expected in other communities.

7.) **Liens** on property owners should not be used as a form of harassment. If a lien is not satisfied within the three year period established in accordance with State Statute 47F-3-116 then it can not be reapplied for if the petitioner never brought the case to court for action. This will keep property owners from being constantly bombarded with superfluous liens.

8.) **Board members and elections** are the survival of any association and can also be the down fall of an association as well. Deed restrictions should incorporate a "must serve clause". Anyone purchasing property in a planned community will be required to serve on the governing board if nobody chooses to run for office. Selection should be done randomly. Serving board members can not serve

more than two consecutive terms within a ten year period and terms should never exceed three years. This will keep an association from stagnating or becoming corrupt. If an outside organization that operates the daily business of an association for profit either by owners consent or directed by local officials then homeowners and property owners must be represented on that board by their elected members.

In Summary, there is much we can do to make associations and planned communities better but with out a "Homeowners and Property Owners Association Bill of Rights" problems will continue to get worse as time goes on. One of growing problems of the associations is "Stagnation" were the same people live and die in the same offices because nobody else wants to participate. Our association is beginning to suffer from this problem but superfluous liens and member ostracizing has done its damage. If a county should intervene and divide up an association or should appoint a self serving organization to run the association, then the property owners will be subjected to the mercy of an outside faction. All associations formed under state law should be deed restricted and charted or not recognized. Better statues that protect homeowners and property owners that incorporate a "Bill of Rights" for these families will be imperative to the survival of current and future associations and their growth. These ideas make the playing field fair for everyone and can be a beginning for our Representatives to find a final solution and foundation to build on. I hope to be at the meeting February 2nd, next Tuesday.

Sincerely,

Royce R. Coles USN (ret.)
101 Dakota Trail
Edenton , N.C. 27932
(252) 221-4774

Hope Carmichael

Testimony of Hope Carmichael
Before the House Select Committee on Homeowners Association
February 2, 2010

Representatives Weiss and McGee and Members of the Committee,

My name is Hope Carmichael, and I am a partner with the law firm of Jordan Price Wall Gray Jones & Carlton here in Raleigh. Since 1991, I have devoted a significant portion of my practice to the representation of homeowners associations and individuals living within those associations in the interpretation of restrictive covenants and the laws of our state governing same. Today, my practice is focused almost exclusively on the representation of homeowners associations, primarily in the Triangle area, but assisting clients statewide as well. The daily matters I encounter range from routine collections to foreclosure, litigation for architectural and general covenant enforcement, developer issues and amendment and drafting of legal documents for associations. I have handled litigation matters involving homeowners associations from the lowest branches of our district courts through and including litigation before our state Supreme Court.

I was pleased to be able to work with Representative Weiss and other members of the House and Senate last summer on House Bill 850 which amended Chapters 47C and 47F. We shared what we have seen as the best practices from lawyers and homeowners associations across the state, and I believe you have incorporated some of those best practices into the statute through the amendments last session. I appreciate this committee continuing the discussion and look forward to your thoughtful consideration of the law affecting homeowners associations. It is an important subject, as over 2 million households in North Carolina reside in a homeowners association. We ask you to keep in mind the millions of your constituents who choose the protections, amenities and conveniences of living in property that is governed by restrictive

covenants, and the orderly administration of those covenants carried out by over 12,000 homeowners associations in North Carolina.

I recognize that not every owner who lives in a homeowners association has the best impression of the system. Hard stories about foreclosures and strict rule enforcement make for compelling headlines, and these stories often make it into the public consciousness far more frequently than the mundane success stories. I routinely see the flip side, though: the 5 families on the cul-de-sac who appreciate that the homeowners association enforced its rules to stop the loud parties that were happening every Saturday night; or the neighbor who is relieved that he can sell his house because the HOA required removal of the car that had been sitting on cinder blocks in the driveway next door for months. You surely don't see many headlines or receive much constituent praise thanking you for allowing the effective collection of assessments which keeps costs down for everyone in the neighborhood – after all, homeowners associations are nonprofit corporations with no source of revenue independent of assessing each owner within the neighborhood.

I would like to share with you my unique perspective on the collection of delinquent assessments. I supervise our firm's practice for collection of delinquent HOA assessments, and I have done so for the past 19 years. I have compiled data from our files for the last 4 years, coinciding with the amendments to 47F and 47C-3-116 which became effective January 1, 2006.

- Between 2006 and 2009, we opened approximately 5,400 files for collection of unpaid assessments.
- 73% of those files were resolved by collecting payment in full without filing a foreclosure action
- The average legal fees paid by the defaulting owner in those cases was $137.50 – far less than penalties and interest legally charged by credit card companies and other creditors in North Carolina.
- Of the remaining 27% of delinquent accounts where foreclosure was actually commenced, less than 1% resulted in foreclosure sale, and less than one-half of one percent (.4%) resulted in a conveyance of the property from the original owner.

I have polled my colleagues in Charlotte, the Triad and Wilmington who have a similar volume HOA collection practice, and their figures are strikingly similar – less than 1% of all collection files commenced result in a foreclosure sale and transfer of title by the homeowners association. Between 5% and 10% of these cases result in the homeowners association's lien being extinguished by foreclosure of the superior mortgage on the property. At least 90%, however, result in the effective collection of assessments, thanks to the fair and effective process set out in our statutes.

Similarly, we counsel clients on managing their budgets in terms of the burden of delinquent accounts. On average, the 800+ homeowners associations that we represent see a less than 10% delinquency rate on their books in any given month. Those who see larger percentages

are likely experiencing a poor collection rate because the HOA has not followed a consistent and efficient collection policy. When we are able to get an HOA on track and following the notice and collection procedures under the statute, the homeowners association almost inevitably sees a drop in the delinquency rate below that 10% threshold.

Thank you for considering the important benefit that the provisions of GS 47C and 47F-3-116 bring to the vast majority of those 2 million+ families living in homeowners associations in North Carolina. I look forward to working with you and answering any questions you may have as you move through your study of this process.

Hope Derby Carmichael
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Tim Sellers

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February 2, 2010

Remarks of Timothy G. Sellers at Public Hearing Before House Select Committee on Homeowners Associations

I am Tim Sellers and I am an attorney practicing law in Charlotte. My law firm represents the developers who create condominium and planned communities, the associations that operate and administer those communities, and the individual owners who live there. I, personally, have been deeply involved with association issues for many years.

In the 1990's I chaired the North Carolina Bar Association's subcommittee that prepared and presented the North Carolina Planned Community Act to the General Assembly which was ultimately adopted in 1998.

During that same period of time, I served on the Bar Association's subcommittee that developed amendments that were adopted to improve and clarify the foreclosure process in Chapter 45 of the General Statutes which is the process that applies to deeds of trust as well as homeowner associations' liens.

In 2005, I worked with Representative Weiss, Representative Earl, and others on House Bill 1541 which made comprehensive changes to Chapters 47C and 47F in a number of areas including record keeping, collection processes, meetings and financial matters.

Last year I worked more informally on Senate Bill 850 which focused on changes to Chapter 47C and Chapter 47F to address title questions related to the lien and foreclosure process to establish uniform procedures for association lien foreclosures.

I am currently a member of the Community Associations Committee of the Bar Association's Real Property Section which is chaired by Sam Franck.

I am not here to speak to you on a single issue or concern. Rather, I want to focus on the bigger picture. The creation of this committee provides a unique opportunity for consideration of appropriate association issues in a thoughtful and comprehensive matter. Often, and by

necessity, the statutory law applicable to associations has been shaped by House and Senate Members responsible for juggling many other issues at the same time. This committee can evaluate perceived problems and concerns and, to the extent those are found to be legitimate and significant, to develop balanced and measured solutions. With thousands and thousands of North Carolinians now living in condominium or planned community associations, it is critical that any action in this area of the law be taken with that big picture in clear focus.

One area that has been identified for attention by the committee is assessments. Significant work has already been done in this area. Substantial changes were made to the assessment collection process in 2005 and again last year. Because associations budget only for their anticipated needs so as to keep assessments as low as possible, it is essential that the law provide effective means to collect assessments when they are not paid. The 2005 amendments to the statutes added substantial owner protections. Amendments to the lien process passed last year went the extra mile to try and ensure that owners receive notice of liens filed and understand their significance. These previous changes to Chapter 47C and Chapter 47F, together with amendments made to the power of sale foreclosure process in Chapter 45, provide substantial protection to owners. While these changes have made the collection process more complicated and longer in duration, owners are now given extensive notices of their obligations and every opportunity to pay them and avoid formal enforcement, if they wish to do so.

There are technical aspects of the collection process that may warrant attention. It would be helpful to provide a uniform process for power of sale liens and foreclosures as the processes currently in use across the state do vary. It would also be appropriate to address concerns regarding the status of title and title transfer through the foreclosure process. I and others drafted proposed legislation to deal with these important technical issues last year but we did not have time to work out the details before the cross over deadline.

I also note that the committee has identified record keeping as an area for inquiry. In 2005, Chapter 47C and 47F were amended to ensure certain financial records were provided to all owners as a matter of course and that other association records would be available on request. Both statutes now link production of records to Article 16 of the North Carolina Non-Profit Corporations Act. It is detailed but can be confusing. Clarification of that statute would benefit not only members of planned community and condominium associations but the members of all North Carolina Non-Profit Corporations.

I would encourage the committee to thoroughly and thoughtfully evaluate these and any other issues that might be raised. To the extent that you find any of them significant and warranting legislative attention, please take the time to find a solution that is balanced and considers the interest of all of the thousands of North Carolinians whose homes and communities will be affected. I stand ready to provide comment and assistance in this important work. I hope you will allow me, and others who have extensive experience in this area, to do so.

of Counsel
Richard C. Forman
Carl E. Marth

Forman · Rossabi · Black
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February 2, 2010

Co-Chair Jennifer Weiss
Co-Chair William C. "Bill" McGee
House Select Committee on Homeowners Associations
N.C. House of Representatives
Raleigh, North Carolina 27603
VIA HAND DELIVERY

Dear Representatives Weiss and McGee:

Attached are my comments for today's Public Hearing of the House Select Committee on Homeowners Associations. Please let me know if you have any questions or need additional information.

With kind regards, I am

Very truly yours,

James H. Slaughter

PUBLIC COMMENTS

Good afternoon. My name is Jim Slaughter. I am an attorney with the law firm of Forman Rossabi Black.

By way of background, our firm's HOA practice is one of the largest in North Carolina. We regularly represent associations as well as homeowners on association matters. I also serve on the Community Associations Committee of the State Bar Association. In addition, I have been inducted into the College of Community Association Lawyers and was elected last month to its national Board of Governors.

While there are a number of specific changes I would recommend to the planned community and condominium acts, today I'd like to focus on four.

First, disclosure. As attorneys we often hear that homebuyers didn't know they were buying into an association until closing or even after purchase. Anything to encourage more information sooner would be an improvement. In some states, detailed disclosure statutes mandate certain information about associations before closing. A smaller but easier legislative change would be to amend the mandatory Residential Disclosure Statement to include information on associations, such as name, dues, and contact information. Purchasers buying into an association should know their obligations as early as possible in the process.

Second, association documents. Current statutes provide that homeowners are entitled to inspect all records of the association. This vague language creates more problems than it solves. We've had homeowners request other members' social security numbers. Other times, homeowners have wanted copies of the actual checks written by all homeowners. Many disputes over documents are not the result of an effort to hide information, but because the association doesn't know what can be safely given out. Clarification of what documents are or are not available for inspection would help both homeowners and associations.

Third, assessments. Dues are the lifeblood of an association. Unlike banks or mortgage companies that are designed to make a profit, community associations are nonprofits. Let me stress that—community associations are not designed to make money; they are designed to pay the association's bills. They basically act as escrow agents for collections by other entities—water, garbage, electricity, landscaping. Funds collected are not kept by the association, but are forwarded to other parties, including the government. For instance, one of our associations recently paid the premium covering 200 units to Nationwide Insurance. Unless associations can collect owed assessments, the association will owe debts but not have funds to cover them. Such a shortfall can only be made up by:

(1) not paying necessary obligations,

(2) charging paying homeowners higher amounts, or

(3) allowing the community's common elements to deteriorate.

I would encourage the committee not to make the collections process more burdensome or expensive on associations and their paying members.

Also, the current statutory process requires that assessment collection be aggressive. In North Carolina, if a bank forecloses on a mortgage, all association dues are lost. One reason that association collections move quickly in North Carolina is that associations can't afford to lose such funds. At least 13 states have adopted Super Liens for associations (and two others are considering such proposals this session). With a Super Lien, in the event a bank forecloses, the association is guaranteed a certain number of months of dues, which lessens the need for the association to be as aggressive.

Finally, governance. Community associations are governed in part by the North Carolina Nonprofit Act. The American Bar Association revised that Act last year, and amendments have been forwarded to North Carolina for consideration. Many of the revisions are less democratic and take power away from the homeowners. I hope that committee members will consider how changes to the Nonprofit Act may negatively impact community associations and consider possible amendments.

Thank you for this opportunity to speak with you today. Please know that our firm is willing to assist you in your efforts in any way possible.

# # #

Herbert D Pearthree

318 Montibello Dr

Cary, Wake County, NC 27513

Beechtree HOA

Subject: Public Hearing on Homeowners Association – HOA's and Sustainable Energy

Good afternoon. I'd like to thank Representative Weiss for holding this public hearing, and thank those members of the audience that are on HOA boards for their tireless efforts in supporting our neighborhoods and communities. My neighbors are on my local HOA board and it is often a difficult and thankless job.

I'd like to discuss the role of HOA's in enabling residential solar energy rather than impeding its growth throughout our state following the Federal and State Government's renewable energy initiatives. I have no professional affiliation with any solar company. As a citizen and homeowner, I would like to install solar photovoltaic panels on the south facing roof of my home to generate electricity and put it on the grid via NC Greenpower.

I commend the General Assembly for NC Session Law 2007-279, senate Bill 670 whose intent is to encourage the development and use of solar resources:

"AN ACT TO PROVIDE THAT CITY ORDINANCES, COUNTY ORDINANCES, AND DEED RESTRICTIONS, COVENANTS, AND OTHER SIMILAR AGREEMENTS CANNOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING THE INSTALLATION OF SOLAR COLLECTORS **NOT FACING PUBLIC ACCESS OR COMMON AREAS** ON DETACHED SINGLE-FAMILY RESIDENCES."

Though this act was made with good intentions, it still enables the prohibition of solar for a large number of homeowners if their HOA perceives solar panels as not aesthetically pleasing **when facing public areas**. Regardless of aesthetics, most HOA bylaws use the phrase "Similar to the other homes in the Community" which allows the HOA Board of Directors to interpret what is similar and what is not. Obviously, the first person installing solar power will not be "similar" to their neighbors. Given the conflict between state initiatives and legacy HOA bylaws and covenants, 18 states have changed their laws to limit or prohibit restrictions that neighborhood covenants and/or local ordinances may impose on the use of solar energy systems. I'd like to see North Carolina follow their lead.

My HOA refused my request on aesthetic considerations even though I had quoted the most modern, aesthetically pleasing solar panels with the least visible roof-top mounting method. I know my HOA Board members, they are my friends, but they had to refuse my request due to

the way the bylaws are written. I did my research and planned this improvement and saved money for 5 years. The installation would look like a large dark tinted window on my roof, and increases my property value by an estimated $8,000. Even though the HOA's primary purpose is "enhancing and protecting the value, desirability, and attractiveness of the properties", the perception that solar power is ugly overrules the enhanced value of my solar installation. Granted, I know the procedure to amend the HOA bylaws and will follow those, but every homeowner in North Carolina should not have to go through that process or through litigation. Neither should each HOA board member have to become an expert on the latest trends in sustainable energy.

Many of us that have the income to invest in solar power also live in communities regulated by HOA's. I live in Cary – we have small lots, mature trees behind our homes and along our beautiful greenways. My home faces south which is perfect for solar power on the roof. However, it also faces the street which gives the HOA the ability to refuse the proposal legally. Given the height of my home, the small lot size, and the fully mature trees in the rear of my home – I don't have room to put solar panels in my back yard – thus I am effectively excluded from having solar panels and that is not the intent behind the NC law. All my neighbors on the north side of the street, like myself, are excluded for the same reasons, as are all others in NC that live on the north side of the street and within a HOA community. Additionally, my neighbors on the other side of the street cannot install solar panels on their homes – as the greenway behind their homes is also a common area.

I find it slightly ironic that federal law prohibits HOA's from restricting satellite dishes that face common areas for watching television, yet no law exists in North Carolina protecting the right for solar power facing these same common areas. I would like North Carolina to follow the lead of the other states that have truly adopted solar rights either through amending our current law or through guidelines which advise HOA's the bounds of aesthetics when it comes to solar and other renewable energy installations. History has shown that guidelines don't make HOA's change their bylaws, only laws and litigation do.

Thank You.



To: **House Select Committee on Homeowners Associations**
Public Hearing – February 2, 2010

From: **Robb Baer, CMCA, AMS, PCAM**
President – NC Chapter of CAI
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Chairperson Weiss, Chairperson McGee and members of the committee. My name is Robb Baer and since 1998 I have owned and operated a Professional Community Management Company in Asheville NC managing over 80 communities through out Western North Carolina. I am also the current president of the North Carolina Chapter of Community Associations Institute.

As you may be aware, Community Associations Institute (CAI) is a national organization dedicated to fostering vibrant, competent, harmonious community associations. For more than 30 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. Our members include community association volunteer leaders, professional managers, community management firms and other professionals and companies that provide products and services to associations.

Community association Boards and Managers must possess knowledge and skills relating to finance, strategic planning, maintenance, personnel management, insurance, human relations, laws and regulations, communications, covenants enforcement, and provide sound advice on the vast array of topics addressed by the members of the communities in which they serve.

Association management has become increasingly specialized and demanding as communities have become more complex and demanding. The responsibilities have taken on even greater importance as local governments have ceded more and more responsibility to community associations – from road maintenance and street lighting to recreational amenities and communications and utilities such as satellite, cable, water and sewer.

It was with these responsibilities in mind that CAI has developed education opportunities for volunteer boards and the only national certification program designed specifically for community association managers, who are hired to work with the volunteer boards to enhance, preserve and protect the communities.

CAI supports a regulatory system that incorporates adequate protections for homeowners, mandatory education and testing on fundamental management knowledge, standards of conduct, continuing education and appropriate insurance requirements such as Senate Bill 516 (House Bill 762) introduced in last years session. This bill, a collaboration between CAI, the North Carolina Real Estate Commission, and the Attorney General's office, significantly enhances consumer protection during the ongoing management and operation of community associations.

CAI is dedicated to fostering responsive, competent community associations that promote harmony, community, and responsible leadership. To this end, Community Association Boards are obligated to maintain, repair and replace common property, facilities, and equipment as necessary. Community Associations Boards require assessments from members to fulfill their fiduciary responsibilities. CAI believes it is imperative for all community associations to adopt and use a financial planning and budget process which accurately reflects the projected annual operating costs, as well as long-term capital and reserves that result in a balanced budget. Community Associations should fund, in whole or in part, reserve accounts based upon replacement cost estimates and annual contributions necessary to assure that all or a substantial portion of those funds are available when needed. CAI also supports full and open disclosure to owners and the opportunity for participation by owners in the development of these budgets.

Community Associations need effective methods to ensure efficient, economic and successful community association collection procedures.
Like a local government's dependence on tax revenues, the financial viability of community associations depends on their ability to collect assessments to meet their continuing expenses. Community associations must be able to collect promptly and efficiently their budgetary obligations from delinquent owners avoiding expensive litigation and minimizing the burden on the remaining owners. In times of difficulties, illness, loss of employment or other economic problems, Community Associations should advocate flexibility and compassion in the application of collection policies and procedures.

The enactment of governmental limitations on effective collection of assessments, fees and other charges of community associations jeopardizes the ability of the Board to adopt reasonable and necessary collection procedures to adequately fund the association to pursue unresponsive, delinquent owners or to effectively have a strong lien against the owner's units. Any state legislation should:

- Provide for full and fair protection of all the homeowners.
- Reflect an equitable balance between all the interests and need of the homeowners.
- Provide adequate standards to promote the operational viability of the community association.

- Promote reasonable flexibility in application.
- and Not arbitrarily preclude or inhibit any form of community association housing.

CAI is dedicated to fostering responsive, competent community associations that promote harmony, community, and responsible leadership. Community association members and associations have rights and responsibilities that should be recognized in order to promote positive and thriving communities. The rights and responsibilities of each party are set forth below in the core areas of Governance, Building Community, and Business Administration.

BUILDING COMMUNITY

Community Association Members

Right To:

- Live in a responsive, competent, and harmonious community association governed by a reasonable, empathetic and impartial board of directors that treats each member with respect.

Responsible For:

- Complying with the governing documents of the community.
- Responding to association-initiated surveys and providing personal insight to help the board establish and implement the association's vision and priorities.
- Volunteering to serve on association committees and on the board with a sense of goodwill and without any conflicts of interest.
- Endeavoring to continuously learn about their community association and to provide constructive input to promote the positive evolution of the community.
- Being informed about issues of concern.
- Reporting all maintenance problems.
- Notifying the board or manager regarding possible employee misbehavior as well as good work, and respecting the relationships between the board and its employees and contractors, and the manager and its employees and contractors.
- Being aware of the contents of the governing documents, and understanding and adhering to their provisions.

- Damage to the community's common areas caused or proximately caused by the member, the actions of family, guests and tenants.

- Being a good neighbor and honoring others' rights to peaceful enjoyment of their homes and common area.

- Maintenance of unit and exclusive use common area, as defined in the governing documents.

Association

Right To:

- Receive goodwill and participation from members to ensure that members live in a responsive, competent, and harmonious community association.

- Have board members be treated with respect as neighbors and as volunteers who have committed personal time for the betterment of the community.

- Seek and receive assistance through community volunteers.

Responsible For:

- Including community building in their short-and long-term goals and planning.

- Fostering a sense of community spirit and encouraging participation in the community.

- Encouraging the establishment of committees whose purpose is to build a sense of community.

- Encouraging all members to have a stake in upholding the governing documents of the community.

- Acting as a facilitator and regarding organizational power as a temporary stewardship.

- Creating ongoing systems to welcome and orient new residents, including both owners and renters.

- Encouraging community activities, programs, and events geared toward openness, fun, and friendship.

- Operating in a professional manner and being responsive to the community's needs.

- Ensuring that community association rules and regulations represent a balance between the needs and obligations of the community and those of the individual.

- Dedicating themselves to continuous learning about and improvement of their association's operations.

- Providing an open forum for member input which may be during board meetings or at such other times as best facilitates communications between members and the association.

GOVERNANCE

Community Association Member

Right To:

- Be treated fairly and honestly by board members.

- Obtain all association fiscal information (excluding information concerning a particular owner or individual employee).

- Quiet enjoyment of residence and common facilities for their intended purpose in accordance with the association's rules and regulations.

- Participate in the process of governance through attending meetings of members, participating in the election of board members, serving on a committee, or running for a seat on the board.

- Have access to association records as specified in governing documents and state law.

- Attend board meetings in whatever manner such meetings are being held (in person or via electronic or telephonic means).

- Learn about board actions, and have access to all approved minutes of the association (other than executive board minutes).

- Live in a home free of conditions within the control of the association that materially interfere with peace, comfort or health.

- Expect all board members to be fully informed and knowledgeable in the association's business matters and the contents of the governing documents, to expect them to seek professional advice when appropriate, and to carry out their fiduciary duties with reasonably prudent business judgment.

- Have legible copies of all governing documents of their community.

Responsible For:

- Participating in member activities, i.e. attending member meetings, serving on committees and participating in other activities which assist the board in governance or enhance the community.

- Participating directly in the governance by casting votes or sending proxies for every election or ballot.

- Respecting the roles of all participants in community governance, and recognizing and honoring those differences of opinion.

- Notifying board of directors when covenant violations are observed or discrepancies in governing documents are noted.

Association

Right To:

- Exercise the authority given to the association under the governing documents and the state laws in which the association is located.

- Make and enforce necessary rules and regulations as authorized in the governing documents.

- Set assessments, according to the governing documents and state laws, to provide for the maintenance and improvement of the common areas.

- Expect all owners to be aware of, and abide by, the provisions of the governing documents, and to expect all owners to abide by the governing documents and to carry out their responsibilities.

- Carry out its duties through the duly elected or appointed board, free of unwarranted interference or threats.

Responsible For:

- Carrying out the duties of the association through a duly elected or appointed board.

- Holding effective, efficient board meetings open for owners' attendance (excluding executive sessions).

- Providing members with access to corporate records (excluding those which infringe upon the privacy of other owners).

- Suggesting and presenting amendments to the governing documents for the owners' approval.

- Enacting reasonable, enforceable rules and notifying owners in a timely fashion of scheduled consideration or new or amended rules before adoption, diligently enforcing such rules in a non-arbitrary manner, and holding fair and impartial hearings for alleged violations.

- Conducting open, fair and honest elections.

- Diligently ensuring each board member fulfills his or her fiduciary duties.

- Obtaining insurance coverage as is required by the governing documents or which the board deems reasonable, including director and officer liability insurance.

- Not unlawfully interfering with an owner's access or peaceful enjoyment of the residence.

BUSINESS ADMINISTRATION

Community Association Members

Right To:

- Be apprised of and have available the business processes affecting homeowners, such as recreation class sign-up, hall rental, design permit applications, complaints, suggestions, etc. in a user friendly process and format.

- Have copies of proceedings of the board made available upon request, and receiving communications via media such as newsletters, closed circuit television and Internet.

- Have an appeals process for decisions made that affect the members, either individually or collectively.

- Have business decisions of the community association made which uphold a member's resale value of their ownership and do not lessen the other benefits of owning a home in the community association.

Responsible For:

- Being aware of the overall direction and condition of the association from a business standpoint, and provide input and personal involvement when and where appropriate.

- Understanding the tremendous responsibilities of the community association board and that business decisions are based on a variety of viewpoints and legal limitations and requirements.

- Making timely payments of assessments of all types, fines, and other charges levied by association.

- Keeping the association aware of their current address.

Association

Right To:

- Be treated with respect when acting in good faith to make decisions in the best interests of the community association members and the association.

- Conduct business of the association as prescribed by state and local laws, and association documents.

- Exercise appropriate business judgment in matters not addressed or directed by state or local laws, or association documents.

- Diligently collect all monies due from members.

Responsible For:

- Acting and making decisions that are ethical and fair, and are for the benefit of the association as a whole, with latitude to make exceptions where warranted on an individual basis.

- Providing for the maintenance of the association's assets, including common areas (grounds and facilities) and finances, by planning and implementing necessary insurance coverage, reserve studies and the resultant necessary reserves, and financial and management audits and reviews.

- Ensuring proceedings are efficient and effective in conducting the business of the association, such that decisions are sound and decisive, based on information/data and professional advice where expertise is not available on the board or staff.

- Making decisions that minimize the exposure of the association to liability and exercising reasonable business judgment in decision-making.

Respectfully Submitted

Robb Baer, PCAM
President – NC Chapter of CAI

Testimony of Henry W. Jones, Jr.
Before the House Select Committee on Homeowners Associations
February 2, 2010

My name is Henry W. Jones, Jr. and I am a partner in the law firm of Jordan, Price, Wall, Gray, Jones and Carlton in Raleigh. I was the President of one of Raleigh's earliest homeowners associations and I have practiced community association and condominium law since at least 1983. We estimate that our firm has served at least 800 to 900 community associations and condominiums between the mountains and the coast during that time period. I was a member of the Bar Association Committee that drafted the Planned Community Act in 1995 and 1996 and worked with the members of the General Assembly to see the legislation enacted in 1998. I was pleased to work with you again in several subsequent Sessions concerning various amendments to the Planned Community Act and the Condominium Act. Clearly, one of the guiding purposes in the language of the Planned Community Act was to adopt some of the most significant and least controversial features from the North Carolina Condominium Act, which had been in effect for about 10 years at that point, especially with regard to the enforcement rights and remedies of members and associations, as well as some dispute resolution. It was hoped that this would prevent small cases from going to Court and needlessly clogging the Court dockets. I think it has

been reasonably successful. I will say that hastily and poorly thought out revisions to either Chapter 47F or Chapter 47C may result in more cases winding up in the Court system, which will not be a positive outcome.

In practicing association law since 1983 I have attended hundreds of board meetings and annual and special membership meetings of associations ranging from six members to several thousand. I have encountered some of the nicest and some of the most unpleasant people within my lifetime. Please remember that if you solicit information from members of the public about their community and condominium associations, you may receive comments from the most disaffected members of their association. In my experience, though, most associations are run effectively by very concerned, public-spirited volunteers who do a very good job, particularly considering the resources they have. Serving without compensation, these Board members perform the functions detailed in their legal documents which their local governments are unable or unwilling to do. One of the most important things this General Assembly could do to improve the quality of life in community associations and condominiums would be to enact a statutory scheme of community association manager licensing, which is currently pending as companion bills, HB 762 (Rep. Gibson) and SB 516 (Sen. Hunt) at this time.

Since the Notice of Public Hearing seeks information concerning record keeping by associations, and since the vast majority of all community associations and condominiums are incorporated entities, they are governed by Chapter 55A of the North Carolina General Statutes (the Non-Profit Corporation Act), which has extensive records retention and disclosure requirements set forth in Article 16, Part 1 of the Chapter, which also includes specific provisions for inspection rights and access to records for association members, as would be the case for the thousands of other nonprofit corporations in North Carolina. If that is not enough, §47F-3-118 of the Planned Community Act and §47C-3-118 of the Condominium Act have specific provisions regarding retention and disclosure of the financial records of associations. Moreover, the bylaws or other legal documents of virtually all community and condominium associations contain specific record retention and disclosure requirements for those respective associations.

With regard to liens and foreclosure, please remember that, historically, developers, who wished to obtain VA/FHA approval for their developments, are required to certify that their developments' legal documents incorporate liens enforceable under State law with rights of foreclosure for collection of the assessment. Other secondary market lenders would also be

concerned if there were efforts to diminish or water-down the right of associations, where they have loans, from enforcing the lien of the assessment to support the association's budget.

Thank you for the opportunity to present these comments. I welcome the opportunity to work with the Committee and staff on these issues.

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Good afternoon. My name is Stacey Redgrave. I have been a Cary, North Carolina resident since August of 2004. I am currently a member of the Cary Park Homeowners Association, which represents over 1400 property owners in the Cark Park subdivision in West Cary. I am here today because of concerns I have with the lack of regulations on homeowners associations within the State of North Carolina.

In theory, this is a win-win contract. Residents are self-governed. They will maintain their property and the common property, their recreational facilities and be charge a fee to cover the costs of maintenance. The municipality in which the HOA exists gets to increase its tax base while reducing the amount of services to that community.

But what happens when there are transactions that are not agreed upon. Suddenly we have a problem. I will admit for me personally I have had no prior problems with my HOA. I liked the idea that residents would maintain their property and our common grounds were maintained, pool and park were to be maintained. Some restrictions are a bit too much but I suppose that comes in every contract; there is always give and take.

The problems in my HOA came to light over the past twelve months with the turnover of the Association from Developer to the Homeowners. First we had an election that was simply called off when the current Board President was not re-elected. The explanation given was, "the covenant does not state that he can't so therefore he can call off the election." I requested that "legal finding" in writing at the time and numerous times since and have never received it. The next election was decided by a builder's block of votes that were not previously announced to the residents but were read at the special meeting to elect the Directors. The number of builder's votes overrode the resident's votes and thereby the builder's aka parcel developers elected our new Board.

The residents moved on and vowed to campaign harder the following year. The controversy arose again when the same builders name came up at a Board meeting several months later when the Board voted to forgive the builder's past due assessment fees estimated to be $281,000. Although the figure has still not be explained and other estimates have the figure as high as $500,000, the Board defended their decision stating that collection of the fees may result in the bankruptcy of the builder. For the record the Board had previously placed liens on homeowner's property for past due fees of $360. The concern of the residents was the undeniable lack of equal protection for the property owners. Who decides who pays their fees and who does not? What precedent does this set for our community? Why should the other builders pay their fees since it seems most were past due as well?

This is what has brought me here today. I have been surprised to learn how little recourse residents have in these matters. I would like to thank Rep. Haegarty and the guidance his office has given me on this matter such as directing me to the NC Planned Community Act, but the fact remains there is little one can do as an individual homeowner. Residents are simply told, this is a civil matter, hire an attorney. Well I did consult with an attorney and was given estimates of court costs and legal fees. These costs could run as high as

$50,000 or more if we went to trial. So in order for a resident to ensure equal protection under the constitution I need to spend $50,000 of my own money? This can't be right.

I have spent the past few months reviewing amendments, covenants, and statutes and have been enlightened on how well these documents protect the developers and the property management companies. The Board, for the most part, consists of volunteers from the community. The majority of these individuals have no legal backgrounds, no formal training, they just wanted to volunteer. Now they are responsible for the review and decision on land sale contracts, transfer agreements, etc. and they are the liable parties in the event of a problem. The parties guiding them are not held responsible.

Our covenant states the recreational facilities are to be turned over to the Association by the Developer when the turnover of the Association occurs. Well this is where it gets complicated. The original developer, since 1996, submits a "change of registered agent" in 2001. In 2009 when we negotiate to purchase the pool from our second developer we discover they do not own the pool, it is owned by the original developer. We are told we cannot negotiate with them directly and have to purchase the pool from the second developer. The original developer sells the pool in 2008 to the second developer for $579.000. The second developer then sells the pool back to the Association for $1.1 million dollars. This may be perfectly legal. I don't know. But it is undeniable that HOA's have increasingly become a vessel for private enterprise with great profit to those parties involved.

In the meantime, homeowners just want fair and equitable treatment under the law. HOA's are no longer a choice for many residents in their search for a new home. According to the CEO of HOA-NC there are 17,326 HOA's in NC with 2,025,000 residents or 53% of owner occupied households. States such as Florida and California are leading the way with stricter regulations and penalties on HOA's like specifying a time period for requested documents and imposing monetary fines if they are not provided. I would urge the committee to review these statutes and enforce stricter regulations as well as require HOA Board members to be licensed by the state to ensure a full understanding of their rights, powers and duties while serving on a Board. Perhaps the committee should consider establishing a HOA Regulatory Commission to monitor actions of the Associations and ensure resident's rights are being protected.

In closing I just wanted to say that I recall moving to North Carolina nearly six years ago with Mayberry in mind, not Mayberry, Inc. Thank you very much for your time and I appreciate your consideration.

Frank Wiedman

Request and Rationale for Changes to North Carolina Planned Community Act (47F)

The laws of the State should protect all the residents equally and not be allowed to get tilted way out of balance to favor one party over another as we believe the subject Statute does. Our request is an attempt to rebalance the scales as we are sure the State intends them to be. We therefore would like you to consider sponsoring a bill to amend the General Statute (47F) North Carolina Planned Community Act to provide individual property owners better legal protection when developer created and controlled HOA's allowed by these Statutes exist as legal dictatorships. Membership in these organizations is mandatory for the property owners and the Board of Directors of these organizations function as a governing body in the communities. The entire Board is appointed by the developer during his control period whose term he defines and has the ability to change. With the individuals representing the developers sitting on both the corporation Board and the HOA Board, conflicts of interest real or suspected can exist to the detriment of the individual property owners and to the significant financial advantage to the developer and his commercial entities that share/utilize the community premises. These HOA Boards control budgets of more then one half million dollars annually. We're certain that the existing law did not intend for these HOA's to operate as they do and we question how these Boards can meet their fiduciary responsibility given the way they are currently allowed to operate.

We'd like the following changes be made and incorporated into the Statute:

- Board Meetings be open to the membership, except for executive session
- Require that a legally recognized formal process be used to transfer common area responsibility between the developer and the HOA
- Business of the HOA and Developer Corporation is conducted at arms length.
- Irreconcilable disputes are settled by an unbiased third party.
- A methodology to transition the HOA Board representation from all Developer to all Property Owners be specified by the law.
- Charge the HOA Board with representing the rights of the property owners.

We believe the changes we're suggesting be made will allow the HOA to function as we believe the law intended. The investment and business interests of the developers will remain protected; his significant represented presence on the HOA board will remain during the early stages of development and incrementally be transitioned as his at risk position in the community decreases. The changes should re-focus the commitment of the HOA Board to truly function in the best interest of the property owner members to whom they have a fiduciary responsibility.

Request and Rationale for Changes to North Carolina Planned Community Act (47F) continued

OPEN BOARD MEETINGS;

Currently HOA Boards are NOT required to conduct all of the general business in open meeting sessions. The Statute (47F-3-108) specifies" The executive board meetings shall provide lot owners an opportunity to attend a portion of the executive board meetings and to speak to the executive board about issues and concerns." Our Board in fact schedules property owners who request attending their meeting to appear before the executive board prior to their meeting and only after the property owners are dismissed do they proceed with the scheduled business meeting in private. This provides zero visibility by the invested property owners into the governing process of motion, second, discussion and voting on matters of concern to the members. These HOA Boards function as Governing Bodies for the community they establish and enforce rules, levy and collect fines and assessments, enter into contracts and disburse funds for services rendered. As such they should be held to the same standard as any other Governing body and conduct their business meetings in an open environment with executive session reserved for personnel, legal and other private matters. The HOA board meetings should be open to members in good standing, be regularly scheduled and advertised in the community newsletter or bulletin board at least 10 days prior to the meeting.

COMMON AREA RESPONSIBILITY TRANSFER

Conveyance of responsibility for maintenance of common areas from developer to HOA should be a more formal and legally recognized process, similar to those that we all utilize to convey ownership of real property. The HOA should also have the right and duty to perform due diligence and the ability to refuse acceptance if problems are discovered. Today the process is very informal and lacks legal traceability, resulting in responsibility being given to and taken away from HOA's at the whim of the developer. In a specific case our HOA dollars repaved a road in our community in 2003 for $157,000 and in 2006 the developer took back responsibility for the road without any financial settlement with the HOA. With the developer controlling the Board of Directors of the HOA there are no checks and balances in the property transfer system. Some of the common areas maintained by our HOA dollars were specifically indicated as the responsibility of our Town in the HUD documents provided to us at the time of purchase (the road mentioned earlier being just one example)

ARMS LENGTH BUSINESS RELATIONSHIP

Developer control of the HOA Board allows the utilization of common vendors (landscapers, lawyers, etc) which makes assigning and tracking actual cost allocation very difficult. Assets of and common areas maintained by the HOA are used by the developer for the benefit of his other commercial ventures without a formally negotiated business agreement with the HOA to share maintenance costs or payment of usage fees. The giving and taking of common area responsibility is not properly managed by the HOA developer controlled Board and zero due diligence is exercised. The HOA Board who are supposed to represent the property owner members basically do what they are told.

Request and Rationale for Changes to North Carolina Planned Community Act (47F) continued

UNBIASED THIRD PARTY TO SETTLE DISPUTES

Legitimate issues and concerns about the business operation of the organization raised to the HOA Board by member property owners are rarely resolved or adequately explained to the satisfaction of the members. Our inquiry to the State Attorney General's office about these questioned business practices received a reply which indicated our only recourse in these type matters is to pursue them in the courts which requires the property owners to embark on expensive and lengthy legal journey. A law suit they would probably lose without the laws being modified to give the rights of the property owner better status in this relationship.

PLANNED TRANSITION OF HOA BOARD MEMBER MAKE-UP

Currently the developer specifies the date and conditions of transition of control of the Home Owners Associations (HOA) in the covenants that he solely creates and amends. The most current amendment of our covenants changes the turnover date from 2015 to 2024. It seems reasonable to us that the membership make-up of the HOA Board should gradually move from all developer appointees to all elected property owners. This transition should be specified by the law and occur as more and more of the properties in the community become privately held, thereby reducing the at risk position of the developer. Allowing the property owners to incrementally take on more and more responsibility of self governing as they become the majority stake holders in the community a concept which more closely follows the democratic governing process we Americans are familiar with.

PROPERTY OWNER RIGHTS

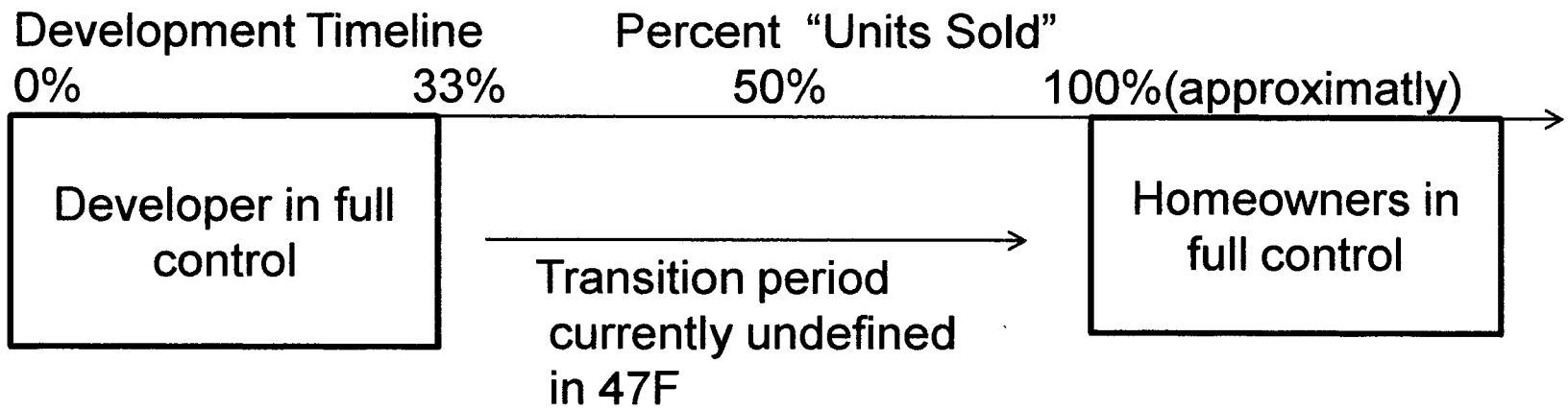
The HOA Board should be legally charged with the responsibility to protect and represent the rights of the property owner members as well as having a fiduciary responsibility to them as the existing law require. This might get a little dicey what with the Board being appointed by the developer and most of the issues and concerns being directed at the developer corporation.

Hopefully we have provided you with enough information and examples of the imbalance to make our point. If you would like additional detailed information or want to meet to discuss this matter in greater depth feel free to contact us. If additional citizen support is required to bring this request to fruition we'll be glad to demonstrate the support you require. We thank you for considering this matter.

Planned Community Act 47F

- Existing law is fine if all the developers were well intentioned
- Unfortunately we have developers who will use the law for self advantage and in that case 47F provides them with lots of opportunities

47F & Development Process



Suggested changes to 47F

- recognize that often the transition process is "emotional"
- Include guidelines for common area (deeded) transfer
- link HOA dues to common area ownership & maintenance
- Clarify the relationship of 55A (not for profit boards) and boards as defined in 47F (fiduciary responsibility)
- Require homeowner(elected) placement on board in proportion to units sold once a threshold is reached e.g. 33%

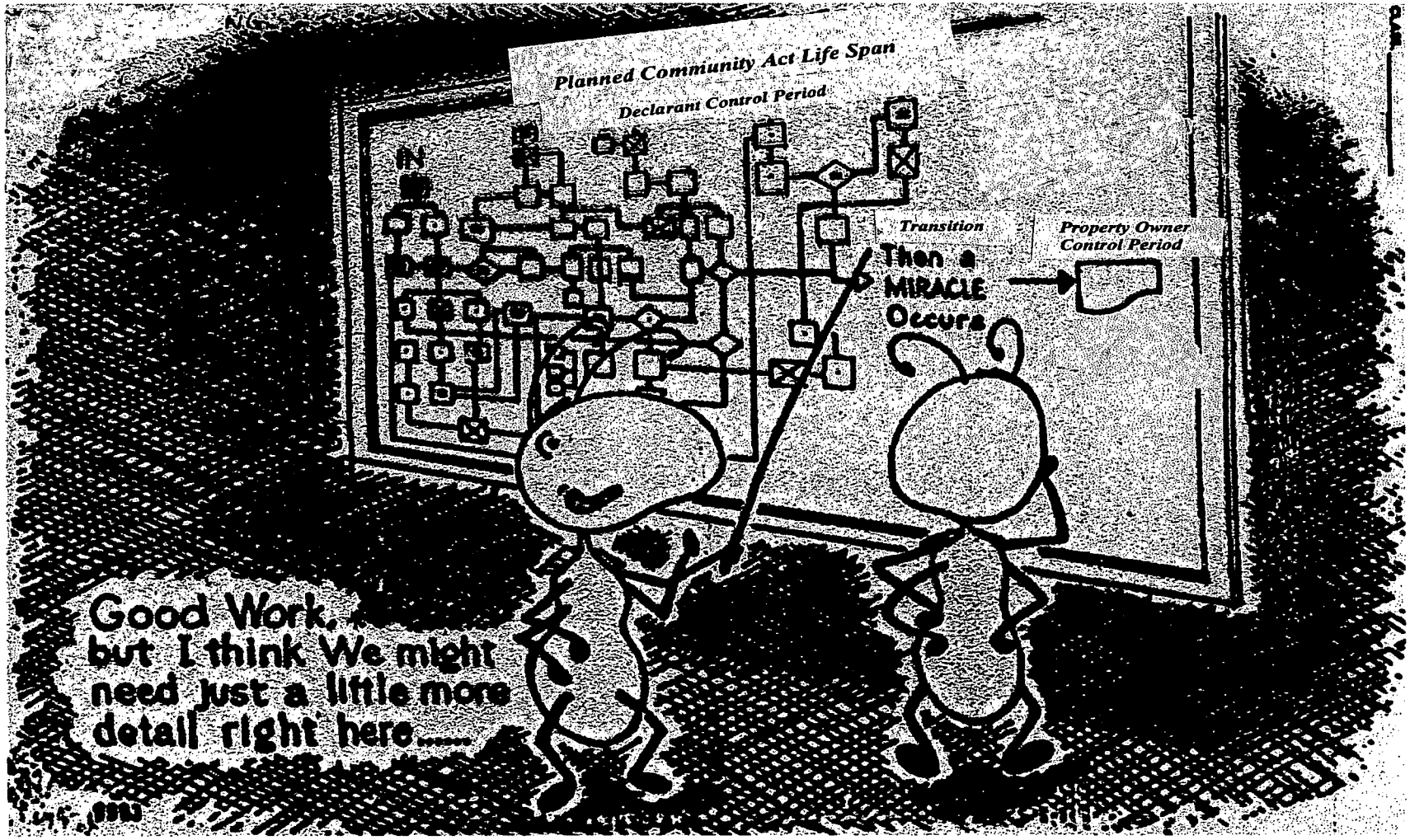
Deficiencies of PAC 47F

- Defines the Declarant Control Period
- Defines the Property Owner Control Period
- It fails to realize that the development of a community can occurs over 10 or more years
- Omits any discussion or guidance on how the transition from one distinct control period to the other occurrs:
    - Transfer of common areas
    - Transition in governance
- Or how to maintain a level playing field for the parties involved during the life time

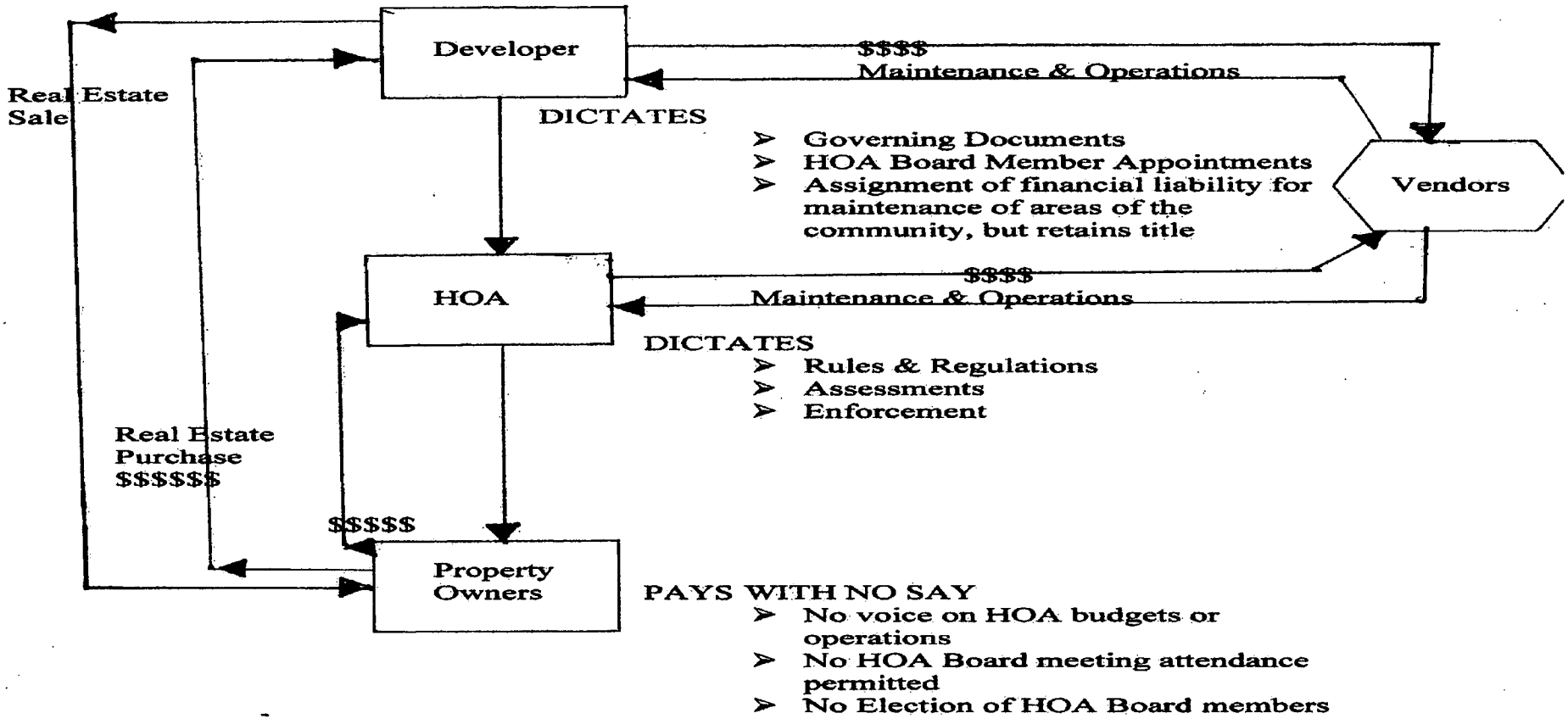
Prevalent Problems During Declarant Control period

- Undefined Life Span of Total Control Over HOA
- HOA Board Closed Meetings
- Built in Conflicts of Interest
- Blurred Business Relationship
- Ownership of Real Property
- Common Area transfer to HOA
- Representing the Rights and Best Interests of the Members

A Little Humor



UNTIL AFTER TRANSITION



The developer is like the **WIZARD OF OZ** sitting behind the curtain and pulling all the strings of the developer controlled HOA. The HOA is a shadow organization created by and serves at the pleasure of the developer that was allowed to legally create it. The HOA Board is either totally comprised of developer representatives or appointees of the developer. The HOA budget, (which in our case exceeds $600k annually) is totally funded by the property owners, because in the governing documents the developer has given themselves the option to exclude their held properties and the other commercial entities of the developer which operate within the boundaries of the community and using its' infrastructure from assessment. The Property Owners also have zero visibility or say into decisions & actions taken by the Board on their behalf.

Presented to the North Carolina House Select Committee on Homeowners Associations

Good Afternoon. My name is Ken Dockser and I am a homeowner in the Cary Park subdivision which is situated in the westernmost part of Cary. We have a pleasant neighborhood with residents from a broad spectrum of backgrounds and a diversity of age groups. When it is fully built out, there will be approximately 1500 homes which range from condo units, to modest bungalows to million dollar homes on Cary Park Lake. There are also apartments in our community as well as a substantial number of subsidized housing. Like many communities in North Carolina, this association was incorporated before January 1, 1999, and therefore enjoys only limited protection under The North Carolina Planned Community Act.

I appreciate your having this meeting and for inviting me to testify. I think that a lot can be done to help the members of the more than 17,000 homeowners associations spread out across North Carolina.

While the situations that I will describe to you this afternoon have happened in our association, I am aware of the fact problems like this persist in other home owners associations. Many times friends and colleagues have related similar horror stories to me.

Homeowners associations' Boards, by their very nature, need a lot of power because they are charged with enforcing the bylaws and covenants. However, power can also lead to abuse and corruption; especially when there are little to no consequences to those in power. So, while the Board is needed to ensure that homeowners abide by the rules, there is no one to ensure that the Board abides by the rules and operates in the best interest of the community. What is needed is a system of checks and balances whereby the board is compelled to follow the bylaws and covenants and where there are opportunities for homeowners to have recourse.

I have served as the Vice President, Secretary and Treasurer in the Cary Park Property Owners' Association. So, while I am talking to you today as a concerned homeowner, I am also talking to you as someone who has experienced what goes on behind the scenes. I have seen, first hand, the good that an association can do for the community and individual homeowners. Unfortunately, I have also seen abuses of the power by board members to the determent of the community. In fact, I have seen our Board act with absolute impunity and arrogance knowing that they have substantial liability insurance, arrangements with a high-powered law firm and a virtually limitless funding to suppress legal challenges from homeowners. This funding comes from both the community's reserve fund as well as the unfettered ability to levy special assessments. This puts homeowners at a substantial disadvantage as the money they put up to contest the boards actions comes from their own savings. Furthermore, should the homeowners lose; they can be required to pay the association's legal fees. The homeowners lose either way.

Community management companies, who are hired by associations to handle the normal day to day tasks including working with the homeowners, sometimes serve as an additional impediment. While I am aware of many management companies that serve their communities well and stay out of board politics, there are others who seem to have a bigger say than the actual members and use this power to serve their own interests.

Sometimes the management companies are unresponsive to the homeowners in the community, at times even serving to block access to the association's records, leaving homeowners in the dark without knowledge of what the board has done. As I understand it, homeowners have no recourse against these managers, only the board, who hired them in the first place. I think that it is necessary that there be oversight of these businesses. They should be held directly accountable to the homeowners for any breaches.

I have seen a variety of personalities run for and serve on the board. They range from those who truly enjoy helping others to those who simply enjoy having power. There are those who have clear vision, and those who look to others for direction. There are those who will pour all their free time into the board and those who will only expend little more than the time to attend a few meetings. While most will fall somewhere between these extremes, I have seen many who approach the boundaries in a variety of neighborhoods. In fact, in a recent discussion with a Cary Town Council member, it was related to me that the council hears from a lot of constituents that their HOAs are run by folks more interested in power than the needs of the neighborhood. Unfortunately, the councilor is powerless to help these homeowners deal with their rouge boards.

While our neighborhood may be larger than most, and older than many, the problems that we experience can occur within any homeowners' association. Furthermore, our problems are only a sampling of the negative consequences that can occur when boards run unfettered. What we are seeing is not so much a function of any particular feature of our community or its governing documents, it has more to do with Board members, their lack of accountability, and the limited recourse that homeowners have under current North Carolina law.

While one could say that the election process serves as the oversight of the Board, this breaks down in practice for a variety of reasons. One of which is the election can be easily gamed in favor of a particular slate of candidates. The other is that individual homeowners often do not vote because they are unaware of what is going on in their neighborhood; like everyone else, they have a variety of their own issues to attend to: work, finances, family, health and other obligations. For many of those who actually received ballots in the last election, all that they had to go on were candidates' blurbs about themselves.

The last election in our neighborhood was rather disappointing to say the least. It took three times to get it "right", if that's what you would call the outcome. The first time the election was postponed because the management company did not send out the various requests for nominations, notices and ballots, all of which were required by the governing documents' rules for the election. The second time, after the proscribed period calling for nominations had elapsed, there were seven candidates for seven positions, and the election of the seven was declared. However, since 2 of the 3 then board members failed to get nominated, they voted to cancel the election and restart the process.

The third time, someone spoke with one or more builders who have many unsold lots, and got them to agree to vote for the president's slate of candidates. It is it unusual for

builders to vote in such elections, and these builders had never paid their annual assessments that all other property owners are required to pay.

The builders owned so many lots that they completely overrode all of the actual homeowner's votes; the election was decided before it was ever held, by an entity that might not have had the right to vote. The effect of the builders' votes was to remove any members from the board who wanted to see the builders pay their assessments, just like everyone else. Sadly, sometime after the election the board voted to forgive the back assessments of these builders which are estimated to be between $250,000 and a million dollars. No attempt was made to place a lien on those builders whose assessments were past due. I am aware of a letter sent to the board by their attorney to effect that the declarations and bylaws do not give the board the right to abate the assessments.

When a homeowner asked to see the ballots to ensure that all had been counted, the management company said that the voters' names would need to be redacted per the association's lawyer. However, the bylaws are quite clear that this is not a secret ballot and homeowners are entitled to see the association's records during normal business hours. Requests to see the billing records have also been denied by the management company, who stated that the only the board can see those. Again, this is in violation of the declarations. The management advised the board to keep its minutes to a minimum so that homeowners would not be able to discover what was being discussed.

Homeowners discovered, after the elections, that other builders were being underbilled by the management company.

When they discovered the missing assessments, homeowners took their complaint to the district attorney. The homeowners were advised that this was a contract issue to be resolved in a court of law. Upon contacting an attorney, they discovered that litigation could be cost prohibitive.

Contrast the forgiving of the builder's debt with a case where a homeowner failed to pay her semi-annual assessment in January 2008. After 30 days, her case was turned over to an attorney for collection. By the end of May a lien was placed on her property and a foreclosure action was filed in August 2008. By September 2008 there was an Order of Foreclosure. There were foreclosures against residents before this and I have been informed that there are other foreclosures currently in process against other residents. It appears that residents are aggressively foreclosed upon for failure to pay a small assessment and no liens have been placed against builders' lots for significant indebtedness.

There is another election coming up in March and many residents are concerned that the builders will override everyone's votes again. This is not unrealistic as it is a reasonable conclusion that the Board curried favor with the builders with their generous vote to forgive their debt. So, one of the very complaints that many homeowners have against the Board may actually be the ticket to their reelection.

In a recent budget meeting that was attended by well over a hundred residents, the Board advised us that we need a majority of *all* residents to veto the budget and so there was nothing that we could do. Folks brought up their issues with the budget and at the end of the meeting a vote was taken. Seven homeowners in the audience voted to accept the budget, leaving over 100 who were against it. The Board declared the budget passed and did not make any of the requested revisions.

In this meeting, when a homeowner inquired about the approximately $250,000 in outstanding assessments owed by a builder. The board said that they had sent a bill to the builder for the full amount. What they didn't say was that they had voted to forgive all of this debt. This was never disclosed and was only discovered when a homeowner made a request to see the minutes of a previous board meeting. So, the Board is not acting in the association's best interest and is offering no transparency.

When asked about having more meetings, sending out a newsletter or providing information on our community's web page, the Board had excuses for each of these. They said that meetings weren't worthwhile as the attendees to meetings only seemed to hover at about 100 homeowners; newsletters weren't worthwhile as they get expensive to mail to so many people; responses to questions could not be posted on the web page because they board needed to meet to discuss each response. I have even heard that the board was considering shutting down the web page due to their concern over liability issues.

The homeowners within a subdivision need to be give fair and accessible recourse when they believe that the Board has violated the governing documents or is not acting in the association's best interest. As I have mentioned, one of the biggest obstacles of recourse is often these issues are considered contractual and need to be addressed in civil court. By creating statutes which guide the behavior of boards and management companies, these issues could be moved to the criminal courts, which would have greater enforcement powers and would serve as a deterrent to rogue boards.

To help resolve these matters quickly, and to keep from backing up the criminal justice system, it might be possible to provide arbitration where a commissioner could hear both sides and make a decision. Or, if the commissioner feels that the homeowners have a strong enough civil case, the commissioner could compel the HOA to pay the homeowners reasonable legal expenses so that neither side has an unfair advantage.

In conclusion I believe that homeowners are looking for visibility, accountability and oversight of their associations as well as their boards and management companies.

I thank you for permitting me to testify today. If you have further questions about any of these maters, I would be more than happy to assist you.

I and other homeowners sincerely appreciate your interest in these matters and hope that meaningful legislation can be enacted.

BRADFIELD FARMS

Charlotte, North Carolina

Representative Jennifer Weiss
Co-Chair of the House Select Committee on Homeowners Associations

Public Hearing – February 2, 2010
The Legislative Office Building
Raleigh, North Carolina

Representative Weiss;

Thank You for the opportunity to speak on issues related to the protection and participation in the governance of homeowners associations in North Carolina.

My name is Bill Colyer and I am the President of the Bradfield Farms Homeowners Association, located just outside the city limits of Charlotte and in Mecklenburg County. I have served as President of the Association for six of the nine years while being on our Board. Our community is comprised of 967 single family homes; we have outstanding amenities; and it is a great place to live.

When my wife and I purchased our home in Bradfield Farms we did so with the assistance of a truly professional and reliable Realtor. Prior to even looking at a house in this community, my Realtor informed me of the existence of a Homeowners Association and the fact I would be agreeing to conditions of the Declarations, Restrictions and Covenants. Prior to making an offer to buy, I was provided a copy of all documents and had the opportunity to review them.

At Closing, both the Realtor and the closing attorney again stated that I was purchasing a home in a community with a Homeowners Association and asked if I had reviewed the Declarations, Restrictions and Covenants? I stated I had and I was asked to sign a separate document which stated I was aware of the Declarations, Restrictions and Covenants and I would be living in a Community with a Homeowners Association. And I would be required to pay an Annual Assessment (Dues) just like my mortgage.

We purchased a home in a community with a Homeowners Association and Declarations, Restrictions and Covenants, by choice, as this really helps to protect one of our largest investments. The Bradfield Farms Homeowners Association Board Mission Statement, found on every meeting agenda is ***"The Bradfield Farms Homeowners Association Board of Director's Responsibility is To Preserve, Maintain, Protect, and Enhance the Value of our Real Estate."***

I mention my most pleasant buying experience, as over the years with my involvement as a Homeowners Association Board Member, I have learned that on some occasions, the home buyer did not receive the information as I have discussed, and unfortunately at some point in time, the buying experience became less than pleasant.

I learned that the document of acknowledgement I signed is a PUD (Planned Unit Development) rider that the Lender and Title Company utilize to make sure you know that you are purchasing a home in a community with a Homeowners Association; that Declarations, Restrictions and Covenants exist; the requirement of paying an Annual Assessment (Dues), and failure to adhere to these regulations may be reason for a foreclosure on your property.

I have learned that this disclosure statement is <u>not required by law in North Carolina.</u> Unfortunately, on occasion, a Realtor or Private Seller may fail to disclose this information, or my make misleading statements as to the legality and enforcement of these documents. I have learned of such situations in our community in conversation with homeowners who suddenly experience violations. Every effort is made to help our homeowner resolve problems, situations or violations in a fair, equitable, and non-discriminatory manner. The Bradfield Farms Homeowners Association Board of Directors strongly believes that foreclosure is a "last resort" to resolve an obligation.

Hopefully, the vast majority of Homeowner Association Community real estate transactions in North Carolina are completed in a professional manner. But unfortunately, I have learned through personal discussion with homeowners that this is an area where we need to be sure that appropriate information and appropriate documentation is provided to the buyer. Enforcement of these provisions should be mandated by state law.

I am not suggesting an additional reporting system or a need for any additional state office or employees to manage such provisions. The vast majorities of the parties conducting real estate transfers involving Documented Homeowner Associations meet professional standards. Legislation should be developed to discipline those who fail to meet these most basic standards of integrity and allow for recovery by those buyers who are violated. Penalties should be imposed upon the Realtor, Private Seller (For Sale by Owner), and the Closing Attorney who do not properly disclose the pertinent information regarding the Homeowners Association. In advance of the closing, the Realtor or Private Seller should be required to provide a copy of the Declarations, Restrictions and

Covenants. This should include other Rules and Regulations, Homeowner Handbook, and any other documents that are not a part of the public record. Disclosure of the name, address, and telephone number of a Management Company or other contact should be provided to answer any concerns or questions.

I, along with concerned homeowner association representatives, professionals including Realtors, attorneys and community management organization representatives, would be available to provide input for such legislation.

May I answer any questions or concerns?

My thanks for the opportunity and privilege to be a part of today's procedures.

William R. Colyer
President of the Bradfield Farms Homeowners Association
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Charlotte, NC 28215-9047
704-568-8805
jwcolyer@bellsouth.net

Pat Easterbrook

I come before you as a former President and current Board member of Lochmere Homeowners Association. Although we have moved around the country, when my husband and I moved into Lochmere in 2000 it was our first experience with a Homeowners Association and its corresponding covenants.

For a start, we had never had the amenities that Lochmere offers -- greenways, trails, parks and lakes --in any of our previous communities. We did not have a newsletter to keep us abreast of happenings in our own neighborhood.

In addition, we very much value our HOA because when you live in communities with no restrictions there is no way to compel people to make obviously needed repairs to their homes, or to keep up their yards, or not to change the face of the neighborhood by clear cutting their entire lot. Any of these actions have a direct impact on our quality of life as well as the value of our home. I strongly believe property values are affected by the other homes down the street or around the neighborhood as well as the important 'first impression' that is made when driving into a community. With rules that all have agreed to uphold, we count on our neighbors keeping up their lawns, repairing their homes as necessary, not having boats or cars parked on the lawn, or trash cans sitting around, etc. It would seem to follow then, that anyone who chooses to move into an HOA Community appreciates the standards that are being set and in fact, was drawn to their home because it was on a street in a community that was being maintained at that desired standard. However, as a Board member, I can tell you that, while most people who move into Lochmere are responsible and happily abide by our covenants, there are the small minority who don't. Without the ability to require compliance with penalty assessments, we would have no way to protect the vast majority of our property owners. We have a procedure in place where it is easy for any homeowner to feel comfortable contacting the HOA if a neighbor is not keeping up their part. The HOA in response will contact the homeowner who is in violation and will request that they do whatever is required to rectify the complaint. There is ample opportunity for rebuttal and for appeal to the Board of Directors. It is only as a last resort that we assess a fine, and we always reserve the right to remove the fine when the complaint is addressed. Our goal is not to make money by fining people, but having a tool to make homeowners live up to their commitments.

We also have Architecture Guidelines that are given to each new homeowner with the rules/guidelines for making changes to their homes and lots. Again, this protects each of us, and helps guarantee that the view we love out our back porch will always be there because our new neighbor won't move in and cut down all the trees and put a hot tub right next to that porch.

In the same way, it is imperative that we be able to compel homeowners to pay their assessments. Without being able to fine the few homeowners who don't pay their dues, we cannot fund our budget, keep up our community facilities, pay our insurance, and take care of our homeowners. Our assessments are set yearly, and usually rise by the same percentage as the CPI (consumer price index). This year, considering the economy, there was no dues increase. If we feel that it is necessary to raise dues beyond this, it is done by a vote of all the homeowners. I can offer 2 examples. 2 years ago, after a Reserve Study of our Lochmere facilities, the BOD determined that we needed a $50 per household dues increase to adequately fund our Reserve Account so we would have the necessary funds to make needed repairs in the future. This issue was explored in our newsletter as well as explained in the notice of our

Annual Meeting. At the meeting, there was an Open Forum and good give and take before the vote. The increase was passed by a larger than required number, and the general sentiment was that homeowners were grateful that the Board was being vigilant and planning ahead on their behalf. We are currently facing another proposed major amendment to our By-laws as the independent Tennis and Swim facilities in our community are facing foreclosure. The proposal we are putting before the homeowners is to purchase these facilities and make them part of the amenities of Lochmere. There would also be a necessary dues increase to fund this purchase. We have kept homeowners abreast of the progress of this proposal by means of our newsletter and our website. We have gotten a volunteer committee to head up committee meetings throughout the community so all members can ultimately make an informed vote. The decision will be made by the homeowners, and in this case, our by-laws require a 2/3rds vote in the affirmative. Let me add that all homeowners have the option of submitting a proxy in lieu of attending the meetings.

Finally, I want to say how much I value living in a community where those of us who live there can volunteer to take a turn serving on the Board of Directors, or as the chair of the landscape committee, or holiday decorations committee or the architecture standards committee—any of our committees. Or if a resident feels we need a new committee, that resident is encouraged to come to the Board and propose the committee and ask for community funding to make it happen. I believe that as part of a Homeowners Association, we all feel as if we have some control over the quality of life that we have chosen and that we value.

Thank you for your time and your attention.

Pat Easterbrook
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McInerney

COMMUNITY ASSOCIATIONS INSTITUTE

Rights and Responsibilities for Better Communities

Principles for Homeowners and Community Leaders

Homeowners Have the Right To:

1. A responsive and competent community association.
2. Honest, fair and respectful treatment by community leaders and managers.
3. Participate in governing the community association by attending meetings, serving on committees and standing for election.
4. Access appropriate association books and records.
5. Prudent expenditure of fees and other assessments.
6. Live in a community where the property is maintained according to established standards.
7. Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated.
8. Receive all documents that address rules and regulations governing the community association—if not prior to purchase and settlement by a real estate agent or attorney, then upon joining the community.
9. Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights.

Homeowners Have the Responsibility To:

1. Read and comply with the governing documents of the community.
2. Maintain their property according to established standards.
3. Treat association leaders honestly and with respect.
4. Vote in community elections and on other issues.
5. Pay association assessments and charges on time.
6. Contact association leaders or managers, if necessary, to discuss financial obligations and alternative payment arrangements.
7. Request reconsideration of material decisions that personally affect them.
8. Provide current contact information to association leaders or managers to help ensure they receive information from the community.
9. Ensure that those who reside on their property (e.g., tenants, relatives, friends) adhere to all rules and regulations.

Community Leaders Have the Right To:

1. Expect owners and non-owner residents to meet their financial obligations to the community.
2. Expect residents to know and comply with the rules and regulations of the community and to stay informed by reading materials provided by the association.
3. Respectful and honest treatment from residents.
4. Conduct meetings in a positive and constructive atmosphere.
5. Receive support and constructive input from owners and non-owner residents.
6. Personal privacy at home and during leisure time in the community.
7. Take advantage of educational opportunities (e.g., publications, training workshops) that are directly related to their responsibilities, and as approved by the association.

Community Leaders Have the Responsibility To:

1. Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
2. Exercise sound business judgment and follow established management practices.
3. Balance the needs and obligations of the community as a whole with those of individual homeowners and residents.
4. Understand the association's governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
5. Establish committees or use other methods to obtain input from owners and non-owner residents.
6. Conduct open, fair and well-publicized elections.
7. Welcome and educate new members of the community—owners and non-owner residents alike.
8. Encourage input from residents on issues affecting them personally and the community as a whole.
9. Encourage events that foster neighborliness and a sense of community.
10. Conduct business in a transparent manner when feasible and appropriate.
11. Allow homeowners access to appropriate community records, when requested.
12. Collect all monies due from owners and non-owner residents.
13. Devise appropriate and reasonable arrangements, when needed and as feasible, to facilitate the ability of individual homeowners to meet their financial obligations to the community.
14. Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association's governing documents.
15. Initiate foreclosure proceedings only as a measure of last resort.
16. Make covenants, conditions and restrictions as understandable as possible, adding clarifying "lay" language or supplementary materials when drafting or revising the documents.
17. Provide complete and timely disclosure of personal and financial conflicts of interest related to the actions of community leaders, e.g., officers, the board and committees. (Community associations may want to develop a code of ethics.)

community ASSOCIATIONS INSTITUTE

Community Associations Institute (CAI) is a national organization dedicated to fostering vibrant, responsive, competent community associations. Founded in 1973, CAI represents association-governed communities, such as condominium and homeowner associations, cooperatives, and planned communities. To learn more about CAI and its local, regional and state chapters, visit www.caionline.org or call (888)224-4321.

Sponsored by CAI's President's Club

Community Association Governance

Tip O'Neill, longtime Speaker of the U.S. House of Representatives, coined the phrase "All politics is local." He wasn't speaking of community associations, but he could have been. There's nothing more local and, therefore, more accountable than those elected by their neighbors to the governing boards of homeowner associations, condominiums and cooperatives.

Virtually every association-governed community has a governing board elected by homeowners in that community. While community managers and other professionals often provide critical support to associations, it is volunteers – elected by their neighbors – who ultimately are responsible for preserving the community, meeting the expectations of neighbors and protecting property values.

About two million homeowners serve on community association boards. Countless others serve on committees that oversee architectural issues, financial issues, landscaping, swimming pools and so on. In all cases, their roles reflect the mission of CAI – fostering vibrant, responsible, competent and harmonious community associations.

With few exceptions, community association board members serve for altruistic reasons, and they serve with the best interests of their communities in mind.

Community associations exist because they offer choices, lifestyles, services, amenities and efficiencies that people value, and the best of them offer a comforting sense of real community. Yet, with all their inherent advantages, associations face complicated issues, none more common than the challenge of balancing the best interests of the community as a whole with the preferences of individual residents. Managing this critical and delicate balance is the essence of association governance.

There are many issues facing the typical homeowner-governed association – financial pressures, insurance costs and the challenge of maintaining neighborhood aesthetics, to name only a few. In addition, many community associations deal regularly with conflicts involving what a resident may want to do and what established rules allow. For example:

- A resident may want to build a large shed in his backyard in violation of the community's established rules for permanent structures.
- Another may want to deviate from the community's established architectural guidelines, e.g., painting shutters bright red instead of the color options set forth in the covenants, conditions and restrictions (CC&Rs).
- Still another may neglect to pay community assessments, placing additional financial burdens on their dues-paying neighbors.

In all cases, we urge volunteer leaders and residents to be reasonable, flexible and open to the possibility – and potential benefits – of compromise.

Thoughtful communication and constructive dialogue are essential!

CAI media contact: Frank Rathbun, (703) 797-6261, Frathbun@caionline.org

The Profession of Community Association Manager

Successful community association managers must possess knowledge and skills relating to finance, strategic planning, maintenance, personnel management, insurance, human relations, laws and regulations, communications and covenants enforcement. More than manage, these professionals must also provide sound advice on the vast array of topics addressed by the volunteers who serve on community association boards.

The profession of association management has become increasingly specialized and demanding as communities have become more complex and demanding. The position has taken on even greater importance as local governments have ceded more and more responsibility to community associations – from road maintenance and street lighting to recreational amenities and communications (satellite and cable).

It was with these responsibilities in mind that CAI developed the only national certification program designed specifically for community association managers. Created in 1995 and administered by the National Board of Certification for Community Association Managers (NBC-CAM), the program established community association management as a distinct profession and continues to offer professional development opportunities specifically tailored to the professionals who choose this career path. Managers who take CAI's course, Essentials of Community Association Management, and pass the National Certification Examination earn NBC-CAM's Certified Manager of Community Associations (CMCA) certification.

CAI provides educational opportunities toward even more advanced accreditation, such as the Association Management Specialist (AMS), Large-Scale Manager (LSM) and the Professional Community Association Manager (PCAM). All are designed to elevate the professional abilities of association managers. More than 5,000 managers have earned CMCA certification. Almost 1,300 professionals have been awarded the advanced PCAM designation.

State legislatures occasionally have sought – inappropriately – to license community association managers as real estate brokers or property managers. Community association management is a specific profession requiring unique skills. By definition, property managers perform facilities management and leasing services. Association managers are hired to work with volunteer boards of directors to enhance, preserve and protect communities. While licensure of real estate brokers, agents or property managers protects consumers in sales transactions, it does not protect consumers – homeowners – in the ongoing management and operation of their communities.

While CAI opposes the regulation of community association managers as real estate brokers, agents or property managers, we encourage the certification of community association managers. In states that propose mandatory regulation of these professionals, CAI supports a regulatory system that incorporates adequate protections for homeowners, mandatory education and testing on fundamental management knowledge, standards of conduct, continuing education and appropriate insurance requirements.

CAI media contact: Frank Rathbun, (703) 797-6261, Frathbun@caionline.org

Community Association Conflict

Rather than David-versus-Goliath conflicts, as often portrayed in the media, disputes in community associations are disagreements among people. Differences of opinion among homeowners, or between individual homeowners and their community associations, often reflect the challenge of balancing the preferences of the individual homeowner with the best interests of the community as a whole. Managing this critical and delicate balance is often the essence of effective community leadership and frequently the greatest challenge facing volunteer boards.

Community association governing documents—typically bylaws or convenants, conditions and restrictions (CC&Rs)—protect all homeowners. People living in an association-governed community have contractually agreed to adhere to the rules in that community. CC&Rs are created to maintain community standards, protect property values and encourage a sense of community stewardship. They would cease to exist if the majority of residents did not want them.

The importance of complying with association rules cannot be overstated. They are developed and enforced so associations can meet the established expectations of all homeowners. At the same time, we advocate open, constructive and respectful dialogue and urge all parties to be reasonable, flexible and open to compromise when disagreements do arise.

Communication and education are critical elements of successful homeowner-community association relations—and the best way to minimize misunderstanding and uncertainty. Education involves making every effort to convey timely, understandable information about codes, policies and procedures to all homeowners and non-owner residents. Open communication, both to and from association leaders, is the best way to identify and resolve issues before they become open conflicts.

Rather than taking sides in individual disputes, CAI's mission is to foster vibrant, responsive, competent community associations. One way we do that is by encouraging homeowner involvement. Whether a community is self-managed or able to hire professional management services, active homeowner involvement is essential. We reap from our communities what we are willing to put into them, in terms of both quality of life and our financial investment. Volunteer to help, serve on a committee or run for a seat on the governing board. It's your home and your neighborhood!

In August 2007, CAI unveiled 12 basic guidelines to help community association boards identify and meet basic benchmarks of responsible governance. Learn more about CAI's Community Association Governance Guidelines at www.caionline.org/governance/index.cfm.

In May 2003, CAI developed* Rights and Responsibilities for Better Communities, *a series of 42 principles and practices designed to help association-governed communities promote harmony, enhance communication and reduce the potential for conflict. Visit www.caionline.org/rightsandresponsibilities/rights.pdf.

CAI media contact: Frank Rathbun, (703) 797-6261, Frathbun@caionline.org

Keith Long

CHATELAINE

My name is Keith Long and I am the President of the Chatelaine Home Owners Association located in unincorporated Union County, just south of Charlotte, NC. We have 80 lots in our gated community, which is now 5 years old. Of the 80 lots, 63 have homes on them, all but 3 are completed.

Chatelaine was developed by Southeast Waterfront Properties, owned by Gary and Randy Allen. Chatelaine has been one of the neighborhoods targeted by mortgage fraud as evidenced by 14 guilty pleas in the past year. Chatelaine was part of fraud cells 1-5 identified by the FBI as "Waxhouse Investigations". During 2007, nine homes sold at prices from $200,000 to $500,000 over Multiple Listing Service prices. Some were never occupied and some occupied by people not normally found in a neighborhood of million dollar homes. We have now had 22 foreclosures filed out of the 63 completed homes.

As a result of the mortgage fraud committed in our neighborhood, it has brought to bear on the HOA the significance of having and enforcing CCR's and By-laws. The Board has foreclosed on property owners who not only were not paying their mortgage or real estate taxes; they were also not paying their annual assessments, plus several residents were dealing drugs from their homes. The Union County Sheriff's deputies were out when evidence of open prostitution and filming of pornographic movies was taking place. The banks were hesitant to take action and in two instances, the HOA voted to foreclose and evict people occupying the property. When evicted, the occupants would steal all the appliances and fixtures, leaving the homes ruined and unsellable.

During this same period, six homes were being built by owners using the provision it was their own home and they did not need a contractor, despite arguments by our Architectural Review Board. All six of those homes have since gone into foreclosure. Two of the owners were convicted under NC Contractors Licensing Board and given slaps on the wrist. In 2009, the Board was forced to file 18 liens which lead to receiving payments of 9 of the delinquent assessments. Pre-foreclosure letters yielded another 4. Today, the HOA is in the process of foreclosing on two owners. We have three more properties which Suntrust Bank filed foreclosure notices on over six months ago. They have yet to take ownership of the properties. We are filing pre-foreclosure notices on those three, following recently revised NCPCA changes.

The Board tried to weigh the difficulty that some owners were having with the fairness to paying members. The Board tried to keep in mind the paying members while doing what we could for those struggling. We tried payment plans with six owners and only one ended up paying. The Board also decided to not foreclose on any owner who was less than a year behind in assessments. The $1600 annual assessment goes to landscaping (30%), utilities (30%), management fees (10%), insurance, repairs and maintenance. The Board elected to cut services rather than raise the annual assessment. Our reserve account is underfunded and we have made no capital improvements. Like a municipality, if funds do not come in we have to cut. Municipalities have the right to lien and foreclose for non payment, working for the general good of the public. We think we should as well. That is our only recourse.

Today there are 15 homes for sale in our neighborhood, many of them are bank owned properties. We will have three liens on bank owned existing houses, and two on bank owned unfinished properties. Having the authority under our governing documents and NCPCA to recover our assessments is the only reason our neighborhood has survived. Although our property values are down 40%, we are optimistic about the future. We ask you not to make it more difficult for those many owners who meet their obligations by making them pay for those who do not. We ask the Committee to do nothing to weaken our ability to collect the funds necessary to operate our community. On behalf of the 50 resident-owners trying to keep our neighborhood alive, we thank you.

Keith Long
603 Beauhaven Lane
Waxhaw, NC 28173
704-256-3411

Alix Porto

My name is Alix Porto and I am a homeowner in one of the largest Homeowners Associations in North Carolina. I am also employed by a Management Company that manages a significant number of Homeowner's Associations in Charlotte and the surrounding area. As a homeowner and an Association Manager, I understand the importance of proper governance of an Association, along with payment of assessments.

Homeowners Associations are non profit corporations run by a volunteer Board of Directors. The Board of Directors for the community is not paid, does not receive special treatment or consideration. The Board Members volunteer their free time for the betterment of the community and its residents.

A Homeowners Association has documents recorded with the State of North Carolina, along with the Planned Community Act, dictating how an Association should be governed, and the laws that apply to the Association.

A troubling trend has taken the forefront among issues in Associations. The issue at large is the collection of assessments. The economic climate has forced many homeowners into a difficult situation and has resulted in a surge of delinquencies. Boards are now tasked with how to collect these delinquencies. Without the income collected by homeowner's assessments, the Association cannot pay the expenses it has incurred; there is no surplus in an HOA's funds.

An Association counts on each and every homeowner to pay their assessment. When a homeowner defaults on payment, it creates a domino effect and everyone in the Association suffers.

I currently manage a large townhome community in which water/sewer, lawn maintenance and insurance are provided through the homeowner's assessments. This particular community has a higher than average delinquency rate. If the Association does not have enough money to pay the water bill, the utility company suspends the service to the entire community. If the Association cannot afford to pay the insurance premium, insurance coverage is terminated. If insurance coverage is cancelled, what happens if a fire were to occur? What happens to the individual homeowner's investment? Should they lose everything as result of those that did not contribute to their fair share of the expense?

These days Boards are faced with making difficult and painful collection decisions. In the end, if a homeowner continues to ignore their obligation to pay their assessment, that homeowner may be foreclosed upon by the Association. It's not pretty and no one takes pleasure in these decisions. Foreclosure is a last resort after repeated attempts by an Association to collection delinquent dues.

If a homeowner has been foreclosed upon or is in foreclosure proceedings, it should come as no surprise. They have been notified several times their assessment is delinquent and they are facing foreclosure. As a Manager, I can attest to how my Boards handle foreclosures and how homeowners are notified throughout the process and can pay their debt in full, or arrange for a payment plan. Payment plans are not always the solution however, as many homeowners default on an accepted plan several months down the road.

It's difficult to believe a homeowner when they state they had no knowledge they are living in an HOA. Who do they believe planted the flowers at the entrance, who maintains the pool and tennis courts?

When I purchased my home, I was told several times of the existence of the HOA. I was given a copy of the Covenants, Conditions and Restrictions, or CC&R's. At closing, we signed a document stating we would abide by the CC&R's for the community. These documents also define the homeowner's obligation to pay their assessment.

Imaging purchasing your dream home, in your dream community only to find out there is no money to pay the bills as a result of delinquent homeowners. The pool is closed, streetlights are turned off. Is it fair those delinquent homeowners are allowed to remain in the community? Should the Association not be allowed to pursue the delinquent assessment even if that means foreclosure? Should these homeowners be allowed to remain in the community and receive services they are not paying for? Not allowing an Association to actively pursue delinquencies, ties their hands and sets up each and every Association for failure.

As a homeowner, I specifically sought out a community with a homeowners association, one that would maintain the integrity of the community, one that would maintain the value of my home. I wanted to partake in the sense of community an Association offers and all of the services and amenities, including restrictions that come along with it. I enjoy the fact I come home at night and do not see my neighbor has painted their home in Hello Kitty Pink. I respect the fact my HOA has restrictions in place to protect, maintain and enhance my community and my own personal value in my home.

The bigger question in all of this is why not push for legislation to ensure Associations are properly managed, by accredited managers and companies. If an Association is to be self managed, ensure they are represented by proper legal council and they are bonded to prevent embezzlement of funds. Why not make it mandatory all Association or Property Managers are licensed?

Kindly take this information into consideration when reviewing the governance and decision making capability of a Board of Directors in a Homeowners Association.

Thank you for taking the time to listen to my perspective.

Marie Gray

Good afternoon. My name is Marie Gray and I am an Association Manager for a company that manages around two hundred and fifty Homeowner Associations in Charlotte and surrounding areas. I am here to speak on behalf of the communities we manage. As the management company, our purpose is to preserve the assets of the community, maintain value, and provide professional assistance in management and financial matters. This is no different from the fiduciary responsibility charged to any homeowner's association. In addition to preserving the community's assets, homeowners buy into an Association because it allows them access to amenities that they may not be able to afford or maintain as an individual.

As a non-profit corporation, the board of director's obligation is to protect the association's funds and assure the assets are secured. In order to guarantee that the financial obligations are met, boards prepare an annual budget of the operating funds based on the assumption that every homeowner will meet their financial **commitment** in order to maintain the value of the community. In today's economic climate, Associations are reducing their operating expenses in order to make ends meet without having to raise their annual assessment.

Many associations have no surplus funds. It is very black and white; if homeowners do not pay their assessments then communities cannot survive. Unfortunately, for some communities, foreclosure is the only way to ensure that their amenities will be maintained. In turn, this only creates an additional undue burden upon the association and makes it impossible to **retain** home values much less appreciate in value.

Board members must exercise sound business judgment and many have established collection policies to ensure consistency and fairness for their members. While I realize that some Associations do not have such collection policies in place, I feel that North Carolina state statutes are effective and create a valuable way to be held accountable. Collection procedures are essential. Associations should act within their scope of authority as defined by state statutes and their governing documents. Chapter 47C and 47F grant the duty to lien and foreclose to the Association while Chapter 45 clearly outlines the procedures and requirements to file a lien or foreclosure. I feel that the current statutes prove fairness and consistency to both the Association and their members.

Next, I would like to address manager licensing. In addition to being an Association Manager, I also have my real estate license. I acquired my license many years ago, not to sell real estate, but as the business manager of commercial brokers. If you have ever read the North Carolina Real Estate Licensing Law Manual, it is apparent that the goal of licensing

law is to ensure real estate transactions are handled in a responsible manner and to oversee monetary transactions. And I think this should be no different from the expectations of an association manager.

About five years ago, our company was hired to manage an Association that had been previously managed by a small "Association Management Company'. A few weeks prior to our start date, I stopped by their home office to pick up a few of records and a check for $1,000 in order to open a new bank account for the Association. As the dogs sniffed my clothes and the ferret ran over my foot, I stood there as the Association Manager pulled a blank check from her desk, wrote the check for $1,000 through Microsoft Money, signed the check herself and handled it to me. At the time, I remember thinking how lucky this Association was that this manager appeared to be an honest person because she could have easily embezzled their $250,000 funds.

The bottom line is that unlicensed Association managers and management companies handle large amounts of money. While embezzlement occasionally occurs, the result can be detrimental to any Association. I encourage you to re-address manager licensing law. However, I am concerned that House Bill 762 would allow the automatic "grandfathering" of any person considering themselves to be an association manager for at least three years prior to the Act. Managers need to be held accountable and to automatically assume they have not displayed fraud, deceit or misrepresentation is a mockery of the whole licensing law. All managers should meet the requirements of Community Association Institute, the National Board of Certification for Community Association Managers or the National Association of Realtors in order to obtain a managers license.

Moving on to record keeping, I would like to address the ability of members to review the documents of the Association as outlined in the North Carolina Non-Profit Corporation, Chapter § 55A-16-02. While I believe the Chapter 16 is very specific regarding procedures to inspect the records, I do believe that the inspection of a delinquency report should be considered a confidential matter between the individual homeowner and the board of directors, and not part of a public record for every association member to review. So often the board of directors battle with what is considered within "good faith and for proper purpose". They routinely will allow the inspection of the delinquency report out of for fear of being considered as non-cooperative or simply "having something to hide from the members". In all fairness to the delinquent homeowner, I feel that upon review of certain confidential documents, the member seeking the review should be required to sign a confidentially agreement. It is one thing, to review documents in order to fulfill a personal satisfaction that

delinquencies are handled in a consistent manner and it is another thing to share this information with the members of the Association.

Last, I would like to address reserve studies. A reserve study provides board members a prospective of upcoming major expenses in order to ensure reserve accounts are adequately funded. Several states already have reserve laws in place as it helps strengthen the community's financial state and market value. Lenders have become more prudent in reviewing association's financial state which in turn affects their market value. I recently began managing a condominium association where three buyers were denied loans because they did not have reserve funding. Although, we are addressing the issue in 2010, without proper reserve funding the financial condition of the Association screams of special assessment. I suggest that you consider reserve funding in the near future for communities where the Association is responsible for the exterior building repairs and all condominiums.

In closing, as an Association Manager for seven years, I appreciate you allowing me to voice my opinion on so many issues that have a direct impact on managing homeowner associations.

SHALLOWBAG BAY CLUB OWNERS ASSOCIATION
Manteo, N. C.
Contact: Virginia Cross
2224 Futrell Robson Road
Bethel, N. C. 27812
252 341 2695

My name is Virginia Cross. I am the current President of the Board of the Shallowbag Bay Club Owners Association located in Manteo, North Carolina though my fulltime residence is near Bethel, North Carolina.

Our association became active in August 2001. The board took over administration of the complex in September 2004. I have been a board member since that time and have served as President since the fall of 2006.

In January of 2006, the developer sold the ship's store and fifty-one marina units to a corporation which assumed Declarant Rights for the marina portion of the complex. Although they sold sixteen units, that corporation paid no dues to the association. In April 2007, liens were filed on all their units. When they still refused to pay, suit was filed as there were other areas of responsibility that needed to be addressed. At a summary judgment hearing in May 2008, they were ordered to pay the delinquent dues, special assessments, and legal fees. An agreement was negotiated with them in June 2008 whereby they agreed to pay not only dues but utility charges for the slips they owned going forward. They paid for approximately six months.

In an effort to collect the monies owed the association, liens were again filed on all holdings of the corporation. When this proved ineffective, foreclosure was begun on the store and three slips as that was all we could afford. The corporation paid off the delinquent accounts the day before the scheduled foreclosure hearing. The very next month, they again became delinquent on all their units.

Members present at the 2009 annual meeting directed the board to proceed with foreclosure on all the units owned by the corporation. That process is going forward even now with the sale to be scheduled in mid-February.

While our situation with the corporation is most likely atypical, there are other situations we surely share in common with other associations. We have members who have had economic reversals, and we try to work with them. We also have some members who simply will not pay until foreclosure is begun. We have one member for whom foreclosure has begun for the fifth time.

Foreclosing on a unit owner is not a step to be taken lightly. The outcome is unpredictable. In three different cases, the lender also foreclosed shutting us out and causing us to lose not only the dues and special assessments owed us but also the legal fees and court costs we had expended in trying to collect what was owed the association. Since 2008, the association has lost $30,117 in dues, special assessments, late fees, legal fees and court costs for non- marina units when the lender foreclosed.

That is the situation we face today with the corporation. If their lender forecloses either before or after the sale, the association will lose $132,193 in dues, utility charges, late fees, legal fees and court costs.

In many ways, our position is much like yours. Members look to our board to provide the services and protections they need, but just like you, we must have the dollars to provide basic services and protections. We find ourselves with collections in jeopardy and only limited, costly means available to collect. Associations do not need more restrictions or limitations on how they can collect delinquent monies owed them. If anything, more and better ways to protect the investment of members and to aid in collections are needed.

With the current situation, those responsible members who do pay bear a double burden of receiving diminished services and of "carrying" those who do not or will not pay their fair share.

Thank you for your attention, and I hope you will give consideration to our situation and these remarks.

Randy Fann

Comments for Homeowners Association Public Hearing February 2, 2010

Co-Chairs McGee and Weiss

Madam Chair and Honorable Members,

Thank you for allowing us this opportunity to speak with you regarding Homeowners' Associations in North Carolina. My name is Randy Fann and I have been with Association Management Group for more than 15 years. I currently serve as Vice-President for Management and Education, and I am based in the Charlotte region. I served two terms on the Board of Directors of the North Carolina Chapter of the Community Associations Institute, the national trade organization serving homeowner association board members, managers, legal, accounting, insurance and other professionals and vendors that serve this industry. I served one year as President of the North Carolina chapter. I retired as an officer from the U. S. Navy prior to my career change and joining Association Management Group.

What is it that makes homeowners' associations attractive? In addition to the benefits to land developers who can build at a higher density, to municipalities who can avoid the expense of building and maintaining additional parks and providing other services, there are also strong attractions to prospective homebuyers. The benefits to homeowners can include amenities that individuals could likely not afford to add to their individual property, such as pools, tennis courts, clubhouses, large green areas, walking trails, attractive entrances and other common enhancements. Of course not all associations have all of these features, but many do. Other benefits to homebuyers and owners include a strong sense of community, greater social opportunities, and a bond with their neighbors. This type of environment does not exist in every community, but it does in the vast majority of homeowner associations. It has been estimated that nine out of ten new homes built in North Carolina are in a homeowners' association, so they are certainly popular and growing.

Like other non-profit organizations, Associations are comprised of members who voluntarily decided to join. Yes, there have been some cases where members did not have a clear understanding of what they were getting into, but in our industry we see this much less now than we did a few years ago. Despite this trend, I would support legislation that mandated full and accurate disclosure of the covenants that would-be owners are entering into. When expectations are met satisfaction runs high. When they are not met, dissatisfaction prevails. It is only fair that prospective buyers understand what they are buying into.

Another strong similarity with other non-profits is that the Association generally pursues common goals, specifically maintaining their infrastructure, providing services, ensuring that house or building exteriors are kept in good appearance and repair, providing social and networking opportunities; in short, making owners proud to live in the community. Owners who are happy with where they live tend to hold out for more when the time comes to sell their home, which obviously increases home values. Preserving and enhancing property values is the #1 goal of the Association.

The North Carolina legislature has enacted laws that benefit both homeowners and associations; specifically the Planned Community Act and the Condominium Act, both of which were strengthened in recent years. I would ask that the Committee further strengthen Associations'

ability to collect the fees that the owners agreed to pay so they can continue to provide the services and maintain the infrastructure in the community so many North Carolinians are proud to call home. Lender foreclosures that extinguish unpaid debt to the Association require the other owners to absorb this additional share. Please consider adopting requirements to the lien procedures that protect the Association rather than punish the remaining owners. I have never met a Board member who was pleased by the prospect of initiating foreclosure proceedings on one of their neighbors. The current remedies available encourage prompt action by the Association to try to collect debts owed; if the Association were protected in the lien process, their Boards of Directors would be much more willing to work out debt repayment plans with the owner who fell behind, or to adopt other policies that discourage foreclosure.

Thank you for your time this afternoon, and also for the work you do on behalf of North Carolina Community Associations.

Spencer Ferguson

I thank you for the opportunity to speak today.

My name is Spencer Ferguson. I am a representative of a company in Greensboro which owns and rents a condominium unit as a rental property.

We have been very troubled recently because some members of the association are not paying their fees. As a result the association has not had the money to make repairs to the building, including replacing a broken window in the hallway.

I am here asking and hoping that you will provide some new methods for associations to more quickly and at less expense, collect money that are owed by non-paying members. It is not fair to those of us who pay our fees on time that some do not. It also makes it extremely difficult to rent my unit, as needed repairs are not able to be made due to the lack of funds collected.

There need to be some easier, faster and less expensive ways given to associations to collect from owners who are not paying their share. Please act to protect those of us who do pay our fees rather than making it easier for people who do not pay, to escape their obligations.

Thank you for hearing my comments today.

Spencer D. Ferguson
(336) 451-5768

House Select Committee on Homeowner Associations Public Hearing
Tuesday, February 2, 2010
Comments By
Jim Laumann, President
Homeowner Associations of North Carolina, Inc.

I want to thank the committee for providing this opportunity to submit comments. The Legislature and the Committee are to be commended for undertaking the formidable task of examining homeowner association issues within our state.

In North Carolina approx 2,025,000 or 53% of all owner occupied households are members of a homeowner association. Nationally, North Carolina ranks in the top ten of states based on the number of homeowner associations.

I am here because I own a company, Homeowner Associations of North Carolina that began seven years ago when there were only 11,500 homeowner associations. Today, there are almost 18,000 homeowner associations in North Carolina. The mission of HOA-NC is to provide education, support, and referrals to associations across the state. We do this through our website, HOA-NC.com. Our website receives 700,000 page views annually, we have over 20,000 registered users and we distribute our e-newsletter to over 13,000 opt-in email addresses. We are ranked 1st in Google related searches, My purpose in addressing the committee is because I believe I can share a unique perspective based on the many emails and phone calls that we receive every day from homeowners and association board members.

As most of us are aware, HB762 Community Association Managers Licensing was introduced in the last session of the General Assembly and is expected to be considered again when the Legislature convenes in May of this year. I believe this is an important issue and I support the legislation. I am pleased to say that we rarely receive negative emails or phone calls from association residents or board members with regard to management companies. I think this is due in large part to the efforts of the State Chapter of the Community Associations Institute. That is not to say that there are no instances of mis-management. Community Manager Licensing will go a long way toward ensuring a higher standard of service and a level of oversight that will better protect association boards and residents

The feedback that I do hear most often is related to management and governance of the association prior to transition to resident control. This includes failure to provide meeting notice, to hold annual meetings, to provide financial statements, to meet expectations with regard to road standards, to fairly and consistently enforce the covenants and to follow best practices with regard to transition. Unfortunately, the residents in the pre-transition period have no governing control and few financial resources to present their grievances in the courts. It seems that a solution is to ensure that the requirements of manager licensing be extended to the declarant or that the declarant contract with a licensed manager during the period prior to transition.

The most important point that I would like to make today is that only 20% of homeowner associations in North Carolina contract with a professional management company!

Another 20% of associations are inactive in the sense that they no longer hold meetings, enforce covenants, maintain a slate of directors, and do not collect assessments. The remaining 60% of the associations in our state are managed by volunteers, typically with little or no training or experience in homeowner association laws or best practices. For this collective 80% of associations, community Manager Licensing will have no benefit.

In the Introduction of his book, The Law of Florida Homeowner Associations, Peter Dunbar, the distinguished attorney who crafted much of Florida's Legislation is quoted. "The residents who assume positions of responsibility as officers and directors of homeowners association will be the key to its success or the catalyst for its failure". I strongly encourage the Committee to consider an education and training component to the proposed legislation. For all association boards and particularly the 60% of self managed associations that will not benefit from manager licensing, this is an important step toward better governance of homeowner associations in our State.

Lastly, I am not convinced that the $50 annual registration fee for each homeowner association is adequate to support the requirements of the proposed Licensure Board, particularly if an education and training component is included. It would be helpful if a proposed budget is made available.

Again, I would like to thank the Committee for this opportunity to present comments.

Jim Laumann, President
Homeowner Associations of North Carolina
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www.hoa-nc.com

CAMS

excellence in community management

February 1, 2010

To: House Select Committee on Homeowners Associations
From: Michael B. Stonestreet, CMCA, AMS, PCAM
Co-owner & President of CAMS (Community Association Management Specialists)

Re: February 2, 2010 Public Hearing

Thank you for the opportunity to be heard during this public hearing. As a professional association manager and the owner of a management company, I support the protection of owners of property in North Carolina. Of particular importance, in my opinion, is licensure of all association management companies and their managers.

The involvement of property owners in the governance and decisions regarding their association's common facilities is essential to build community. Volunteers usually have busy lives and their interest is in building a good neighborhood; therefore, a professional manager is often called upon to take care of the day-to-day responsibilities of running the business involved with an association.

When becoming the managing agent of associations that have been self-managed or managed by an inexperienced person or company, the record-keeping is often poor, legal meeting notice & other requirements have not been met, and the association has incurred unnecessary expenses. One example of an unnecessary expense we see is the payment of property taxes by associations on their common areas because the required paperwork has not been submitted to authorize their tax exempt status.

The management of an association's finances is one area of fiduciary responsibility of the Board of Directors that is typically outsourced and performed by a managing agent on their behalf. Proper budgeting is essential to ensure funds are available to pay association expenses and properly maintain reserve funds. Bear in mind, some association budgets are in excess of $1 million dollars and require the collection and proper handling of association funds and investments.

Managers are required to be expert in many capacities. Only testing of various aspects of community management can help insure managers have at least a minimal understanding of these areas (insurance requirements, accounting, understanding legal documents and state laws that effect communities, etc.)

I strongly support House Bill 752 as drafted partly due to the fact that it authorizes a governing body separate from the North Carolina Real Estate Commission. Thank you for allowing me to speak on this matter.

Respectfully Submitted,

Michael Stonestreet, CMCA, AMS, PCAM

Jayne Nelson (Rep. McGee)

From: John Quinn [jjquinn53@yahoo.com]
Sent: Friday, January 29, 2010 2:00 PM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Cc: Rep. Julia Howard; Renee Weaver (Rep. Howard)
Subject: House Select Comm. on HOAs
Attachments: UCNLF General Pamphlet.pdf; 2009_1-22 Forum Article.jpg

Dear Representative Weiss and Representative McGee,

I recently was made aware of the House Select Committee on Homeowner Associations. I was pleased to hear about your work in this area. I recently spoke with Rep. Julia Howard and shared with her information relating to our Town's experience working with HOA Boards who are seeking to connect with other neighborhoods and government resources in order to better serve their members. It has been encouraging to see how both the neighborhoods and the town have benefited by making connections and strengthening relationships.

I am asking that a place on your February 1, 2010 agenda might be reserved for me to share with the Committee how that government entities might benefit from supporting the civic initiative our local HOA Boards have started. I am attaching two documents. One document is a summary article I wrote about the "Community Leaders" meeting I hosted last year. My comments to your committee will be related to the material referenced in the article. The second document is the pamphlet created by the Union County Neighborhood Leaders Forum (UCNLF). Thank you for considering my request. I will look forward to hearing from you.

Best regards,
John Quinn
Mayor, the Town of Indian Trail, NC
704-821-7671
mayor@council.indiantrail.org

SEE BELOW FOR ADDITIONAL INFORMATION:

An Invitation to Association Management Companies and the Associations they Manage

Nearly a year ago, a community leaders forum was held to discuss issues faced by neighborhoods with and without homeowner associations. Approximately 70 representatives from twenty Indian Trail neighborhoods attended. The meeting was hosted by Mayor John Quinn of the Town of Indian Trail and included staff from the Town, several town council members and the Chairman of the Union County Commissioners.

Neighborhood leaders met several more times and concluded that an organization was needed to provide a venue for them to communicate and address common issues that affect them. An Interim Board was elected, expanded the vision of inclusiveness of the group, and incorporated as a non-profit organization in North Carolina. The organization is called the **Union County Neighborhood Leaders Forum (UCNLF)**.

You and the associations you manage are invited to attend a meeting on January 21st from 6:30 - 8:30 pm at the Colton Ridge Clubhouse, 4007 Colton Ridge Drive in Indian Trail.

The meeting on January 21st will include a report on the work of the Interim Board over the past year. We will also discuss plans for the first major activity, a conference, that will be held in March 2010. We welcome your participation in this discussion as well. Please consider whether you might like to make your company more widely known by making presentations or sharing materials at this or future quarterly symposia.

The attached brochure explains in more detail what the Forum is about. We urge you to read the brochure carefully and consider joining in one of the three categories of Affiliate Membership described in the brochure.

Please join us on January 21st as we open a new chapter of the Neighborhood Leaders Forum.

Kathy Kukor
President, Interim UCNLF Board &
President of the Colton Ridge HOA
Phone: 704.661.7403
Website: www.ucnlf.org



A Letter From the Mayor

Last month, I was honored to host Indian Trail's first "*Community Leaders Forum.*" More than six dozen representatives from over twenty Indian Trail neighborhoods participated. The Forum event was designed to bring our communities together in partnership and cooperation as well as provide town officials an opportunity to understand neighborhood issues and work to offer solutions.



Citizens gather in breakout groups for discussion

The beginning of the event was planned to allow Homeowner Association (HOA) Board Members and other non HOA community leaders to get to know each other as well as meet both town staff and the Sheriff's deputies. Community leaders then listened to presentations from Indian Trail staff and the Sheriff's Office. Our presenters shared information with attendees about programs and levels of service that are currently being provided by the town and the Sheriff's Office.

The leaders then moved to tables for a breakout session where they discussed issues such as law enforcement, roads and transportation, communication, town services, and code enforcement. At the end of the session, each table presented a list of concerns and areas they believed the town needed to address. This valuable information will be reviewed by both staff and the Town Council in our upcoming retreat and as we prioritize for the new budget year.

Indian Trail's community leaders are talented and committed people who provide a valuable service to our town. As Mayor, I'm proud to recognize and support the work they do. As we work together to identify needs and solve problems, Indian Trail will be an example to our region as a town where the needs of the people come first.

Mayor John Quinn

UCNLF Membership

Category/Fees

Sign up for:	Fee
☐ HOA Membership	$ 100.00
☐ Associate Member	20.00
☐ Affiliate Member—Gold	500.00
☐ Affiliate Member—Silver	300.00
☐ Affiliate Member—Bronze	150.00

HOA Membership entitles each HOA to a vote, 5 passes to quarterly events, full-access to protected website materials, and member directory.

Associate Members receive significant discounts to quarterly events, member e-bulletins, and regular access to website resources.

Affiliate Members receive advertising space on our website, host information booths, get ad space on all printed materials, and have access to member directory[1], depending on their membership participation level.

[1] Membership directory limited to one-way communication through UCNLF website. Personal information is never disclosed to Affiliate members. See our website at www.UCNLF.org for more details.

Please make checks payable to:

Union County Neighborhood Leaders Forum
c/o Eric DeGraff, UCNLF Treasurer
1015 Wadsworth Lane
Indian Trail, NC 28079

Kathy Kukor

UCNLF Chairperson
&
President, Colton Ridge HOA



I saw the value and benefit of becoming actively involved with UCNLF early on. The basic premise is simple: we all have come across challenges in our efforts to improve and/or maintain our home, our street, our neighborhood, and by extension, our town.

The purpose of UCNLF is to aggregate and disseminate the experiences, lessons learned, and best practices applied successfully by local individuals. UCNLF provides the resources local resident volunteers and neighborhood leaders need to validate their work, minimize their efforts, and share their experiences with their peers.

I'd like to personally invite you to become a member today.

Members of the Board

Kathy Kukor, President	Colton Ridge
Samantha Towns, Vice Pres.	Villas of Sun Valley
Eric DeGraff, Treasurer	Wadsworth
Roger Fish, Secretary	Taylor Glenn
Favio Perez	Arbor Glen HOA

UCNLF

UNION COUNTY
NEIGHBORHOOD LEADERS
FORUM

Membership Information

Solving Common Problems by Sharing Experiences

www.ucnlf.org
(704) 661-7403
UCNLF a non-profit corporation

union county
NEIGHBORHOOD LEADERS
forum

Who We Are



Cooperation is the key to our success

Union County Neighborhood Leaders Forum is a member supported organization dedicated to assisting local neighborhood leaders and volunteers build and maintain thriving communities.

UCNLF is a non-partisan, non-political, non-profit organization that encourages and provides a forum for neighborhood leaders to communicate and address local issues that effect many neighborhoods with and without homeowners associations (HOA).

UCNLF focuses on any and all issues that affect the safety, vitality, and desirability of neighborhoods throughout the county. There are many valuable resources and experiences in our communities. UCNLF works to collect and disseminate that information for the benefit of every neighborhood .



Resources come in many forms.

By aggregating this type of information, we intend to spur new ideas, motivate communities to action, and ultimately improve the condition of the entire county.

Please join us and help make Union County a better place for our family, our friends, and each other.

Our Vision Statement

Our Vision is to support neighborhood leaders in building and maintaining thriving communities.

Our Mission

Our Mission is to provide a venue for neighborhood leaders and volunteers to:

- *Facilitate communication among HOA and other neighborhood leaders and volunteers;*
- *Identify common needs, issues and problems, and share possible solutions; and*
- *Serve as a unified voice to town and county leaders.*

Our Activities

Activities in the furtherance of its mission, UCNLF will:

- *Provide and perform services, such as planning and hosting training seminars for neighborhood leaders and volunteers; aggregate and disseminate useful information via our website, and regularly update our members on issues that may impact their local communities ;*
- *Coordinate activities that engage our members and volunteers; encourage participation and involvement in committees, event panels, member website , etc.; and,*
- *Solicit and acquire funds and other support from all available sources to advance our goals.*

Planned Activities

Quarterly Symposiums

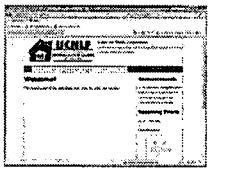
Each quarter, UCNLF will host a symposium on topics our members want to learn more about. Visit our website for an updated agenda.

Leadership Development

Many subdivisions, even those without an HOA, should hold regular meetings with its residents. We have assembled manuals on issues like meeting planning, consensus building, HOA responsibilities, board member duties, etc. that are available to our members for free.

Website Resources

Our website (http://www.ucnlf.org) is our central clearinghouse for information, tools, and virtual idea exchange. Things you'll find online:



- Community event planning templates,
- Online event calendars,
- Email list management tools,
- E-newsletters,
- Community forums,
- FAQ's,
- Specialty vendors directory, and
- Useful downloads from our digital library.

Please note that some features are limited to regular members and/or affiliate members.

Royce Coles

Summary of Letter on Homeowners Associations

It really doesn't matter how your association was formed or where in North Carolina because we must follow the same laws in forming an association but even though we might be a little different in the text, we all have similar problems. The Covenants, conditions and restrictions in some associations have become so restrictive and difficult to litigate that one North Carolina Chief District Judge ruled against an association having the authority to assess fees on its members.

These laws, written by lawyers for lawyers are imperfect and loop holes which often favor the controlling factions and not the individual members. For example, 47F-3-102 "Powers of Owners of an Association", to collect assessments from lot owners for common expenses seem to work against 47F-3-114 when defining the term "reasonable". These expenses are for the maintenance, repair and upkeep of the common elements and other budgeted expenses however, an association can also maintain a "reasonable" reserve fund from these common expenses. The problem is, how do you determine reasonable? In the case of my association, they raised our assessment fees to put more money into bank accounts generating money in the form of investments. For a long period of time we did not know these accounts existed, and to the extent of thousands upon thousands of dollars. Even though, now a one line item in our budget, we do not see the cause and effect of this money and what many believe is total accountability. However, it is impossible to get any court to determine what is reasonable in order to protect the individual homeowner or property owner. That loop hole needs to be defined in regards to the term "reasonable". An audit is almost impossible to acquire and not without the help of an attorney and by time you get an audit, it might be much later and much more costly than expected.

Voting within associations has been questionable, especially when boards or a portion of the members and not always the majority favor a proposition. Have you ever had a vote and when the results are revealed, there seems to be less **no** votes than what were actually cast, then you talk to your neighbors and everybody is scratching their head. This causes supposition and discontent because voting is not controlled in associations and for voter fraud, there must be penalties for its practice, while implementing better controls.

Stagnation is term I have applied to associations which have the same members in office year after year after year. Many homeowners and property owners often accept the bad along with the good in order to not be involved. This also gives board members more freedom to exercise their agenda when nobody cares. The problem is when members die off and people will not or refuse to serve then eventually the county will intervene and assign an outside faction to conduct the daily business of an association or split it up and sell off the common elements. Either way the homeowners and property owners will suffer. My association is beginning to have problems with people willing to serve but useless liens and ostracizing members have done its damage. If there is one thing we have learned about mankind it is this. When you give people power over you, there is always the possibility it will be abused, when you give people control over your money and your property, then there is always the possibility of corruption and when you assign people

your right to make decisions in your name, then there is always the possibility that they will be self-serving. What is needed is a homeowners and property owner's Bill of Rights. A "Bill of Rights" added to the state statutes for the protection of association members should have the following but not limited to these suggestions.

Opting Out should be the right of any member if the only binding boundaries or common elements are the amenities offered to the association members such as swimming pools, club houses, boat docks, and ect. If a member chooses not to use them then why can't there dues be dropped or amended? For older people, who have no desire or need for these amenities then it would be to their benefit especially if living on a budget. However, associations that have imposed deed restrictions opting out may not be an option since the association might be bound to the member and the member bound to the association. Still dues could be amended if a member chooses not to use the common elements or amenities.

Amenities should be strictly for the members and not given or sold to other people or organizations. This includes not offering honorary memberships as well.

Voting should be controlled and subject to state laws. Voting could be done through an impartial source such as local election boards who are paid through our tax dollars.

Audits should be made available and completed within two weeks. Putting an annual budget on line for members would probably be a more viable answer.

State Attorney Generals Office must be a controlling entity in accordance to state laws. Currently our present Attorney General has removed himself from being involved with complaints by association members and he has refused to consider both of my correspondences and offered no real reason why. This office could solve or take care of most complaints by offering advice and a sound recourse for complaints which might include voter fraud, misuse of funds, fraudulent foreclosures, and graft.

Buyer Awarness should be an honest endeavor by real estate agents. They should make buyers informed that to live in a planned community may require responsibilities to your neighbors not usually found in other communities. They should go over the covenants, conditions and restrictions with buyers prior to purchasing property not after.

Liens should not be used as a tool for harassment of members.

Board members and elections should be controlled. Terms should be limited and board member re-election limited to two consecutive terms within a set time frame. Deed restrictions should have a "must serve" clause when associations are formed for all members and if need be random selection considered or put in place.

Currently there are little to no recourse for association members who find fault with their association. In a letter sent to me by our county manager, the county does not get involved with association disputes. Once the corporation who sold the property and imposed deed restrictions has passed them on to a viable association then the county has no authority in those matters. When the Attorney General's office turns their back on these complaints, then it leaves members in a situation which often goes against them.

Royce R. Coles

CHOWAN COUNTY, NORTH CAROLINA

EDENTON, NORTH CAROLINA 27932

October 23, 2006

Royce R. Coles
101 Dakota Trail
Edenton, NC 27932

Dear Mr. Coles:

I received your letter of October 6, 2006 concerning the private prohibition of home rentals in Arrowhead Beach subdivision. The restrictions of the private covenants governing the use of properties in Arrowhead Beach are only enforceable by the original developer, the current Association, or any of the individual lot owners. The covenants of your subdivision which were placed on the public record by the original developer, and which were later assigned to the Association for administration are private declarations and therefore cannot be enforced by a local government. I sympathize with you as a lot owner if the Association leadership is not enforcing the private covenants applicable to Arrowhead Beach properties. If that is the case, then I would encourage you to seek the advice of private legal counsel to explore your other options of enforcement.

In a more positive response, Chowan County's recent county-wide zoning ordinance adopted on October 2, 2006 applies to your subdivision. The uses of lots in Arrowhead Beach are now limited by the county's ordinance to residential, with commercial uses being prohibited. The ordinance, of course, is enforceable by the County. We look forward to addressing some ongoing problems in Arrowhead Beach by the administration and enforcement of this new zoning ordinance. The ordinance does not, however, preclude a lot owner from leasing his or her property to another for residential use.

I am always available to discuss concerns if any citizen of the county. Chowan County has always enjoyed a positive working relationship with the owners in Arrowhead Beach subdivision. And we look forward to the new zoning ordinance having positive results on land values and the quality of life there.

Sincerely,

Luther C. Copeland
County Manager

Statement of Royce R. Coles in Regards to the Problems of Home Owners and Property Owners Associations.

To: House Select Committee on Homeowners Associations.
Representative Jennifer Weiss, Co-Chairman
Representative William C. McGee, Co-Chairman,

Dear Congressmen,
It has been a long time since 1944 when our federal government established the first planned subdivision of homes that incorporated deed restrictions on the homeowners in Levittown, N.Y. Even though these restrictions were minor then, things have grown to be in some cases so restrictive in homeowners and property owners associations in this country that they have become impossible to litigate resulting in one Chief District Court Judge, who ruled against an association not having the authority to asses fees, as in the ruling of Judge Christopher Bean of Currituck County, N.C. (see attached).

With that said, many polls show that 65 to 78 per cent of homeowners are satisfied with their homeowner and property owner association agreements. However, this leaves 22 to 35 per cent of Americans in these agreements under the hammer of what they believe to be unfair and unjust agreements and many feeling these same agreements are not even adhered to by the governing bodies which administer these restrictive CC&Rs' (Covenants, Conditions, and Restrictions). For example, in the property owners association where I live, our dues were raised in order to increase funding to bank investments which have thousands of dollars in them and have a continual flow in and out of monies, which even though a one line item in our budget, we never see the actual cause and effect of the money. Many believe this is a violation of the Planned Community Statute 47F-3-114. It is impossible to get an audit without the assistance of a lawyer and this leads to supposition and discontent. The current Attorney General for our state has eliminated himself from helping homeowners and property owners because it either does not serve his best interest or he finds the complaints trivial. I have written to him twice and he has taken himself out of the loop as a viable recourse or to even look in to the matter.

It should be understood that these associations and planned communities provide a service and many homeowners ignore the bad and dwell on the good especially the security and amenities provided by a functioning association even though some are stagnant and will eventually die from attrition or be taken over by outside factions because of lack of participation by its members or by direction of local officials due to problems internal to the associations. If for the reasons already stated and many yet to be raised, **this is why North Carolina needs a "Homeowners and Property Owners Association Bill of Rights".**

Regardless if an individual or family lives in a common interest development or a planned cooperative or condominium a "Bill of Rights for Homeowners and Property owners in Associations and Planned Communities" should have the following but not limited to these items.

1.) **Opting Out** of any association or planned community should be the individual right of any property owner in those associations and communities where the only binding boundaries for all members are amenities (swimming pools, beaches, playgrounds, clubhouses, boat docks, ect.). Then opting out is an option based on state law if the family or individual chooses not to use these amenities. Notifying the association in writing should be sufficient and dues should be suspended. **However,** associations and planned communities that have imposed deed restrictions are bound to the owners and the owners bound to the association simply by an individual or family purchasing property within that planned community. Again if assessed fees are for the sole purpose of upkeep of amenities, opting out of paying dues should be allowed or dues amended if a family chooses to not use those amenities but they are still part of the association for voting and membership.

2.) **Amenities** are for the sole use of members of associations and planned communities and will not be given or sold to outside companies or individuals including politicians, lawyers, local public servants, and non member families.

3.) **Voting** is always in question when it is done by a board who might not be trusted by some or discrepancies have been noticed in past voting. Since associations must follow state laws in forming their guide lines then voting on deed restrictions, covenants, and by-laws should be restricted to state laws and controlled by the County Elections board. Notification of voting on issues will be published in local paper (s) by the controlling board or officials for an association 30 days prior to voting and ballots and information mailed to members 30 days prior to voting and completed votes mailed to the Elections Board. The Elections Board will make the results know in local paper (s) and by letter to the controlling board within the association or planned community. This should be an example of our tax dollars working for us.

4.) **Audits** requested by any member of an association or planned community should be adhered to within 15 days and conducted by the member or their chosen representative with the association or planned community treasurer or accountant present. Putting an annual audit on line for all members to see might be a viable solution.

5.) **State Attorney Generals Office** must be a controlling entity in accordance to state laws when violations to deed restrictions and established covenants are not adhered to and members have sufficient complaints. Keeping aware of graft and embezzlement of funds, voter corruption, misuse of funds, and the fraudulent foreclosure of any member's property should be the Attorney Generals priority and that offices responsibility. Members should be able to contact the Attorney Generals office for a statement and if need be for a recourse of action to be established. A "Hotline" should be made available. Many problems could be taken care of at this level.

6.) **Buyer awareness** must be made available to families and individuals who are purchasing property within an association or planned community. Real Estate agents must be required to go over the deed restrictions, covenants and by-laws with all buyers and answer questions that may arise prior to purchasing and not

after. It must be understood and buyers made aware that to purchase property in a deed restricted planned community will require individual responsibility and compliance to the association and your neighbors not usually expected in other communities.

7.) **Liens** on property owners should not be used as a form of harassment. If a lien is not satisfied within the three year period established in accordance with State Statute 47F-3-116 then it can not be reapplied for if the petitioner never brought the case to court for action. This will keep property owners from being constantly bombarded with superfluous liens.

8.) **Board members and elections** are the survival of any association and can also be the down fall of an association as well. Deed restrictions should incorporate a "must serve clause". Anyone purchasing property in a planned community will be required to serve on the governing board if nobody chooses to run for office. Selection should be done randomly. Serving board members can not serve more than two consecutive terms within a ten year period and terms should never exceed three years. This will keep an association from stagnating or becoming corrupt. If an outside organization that operates the daily business of an association for profit either by owners consent or directed by local officials then homeowners and property owners must be represented on that board by their elected members.

In Summary, there is much we can do to make associations and planned communities better but with out a "Homeowners and Property Owners Association Bill of Rights" problems will continue to get worse as time goes on. One of growing problems of the associations is "Stagnation" where the same people live and die in the same offices because nobody else wants to participate. Our association is beginning to suffer from this problem but superfluous liens and member ostracizing has done its damage. If a county should intervene and divide up an association or should appoint a self serving organization to run the association, then the property owners will be subjected to the mercy of an outside faction. All associations formed under state law should be deed restricted and charted or not recognized. Better statues that protect homeowners and property owners that incorporate a "Bill of Rights" for these families will be imperative to the survival of current and future associations and their growth. These ideas make the playing field fair for everyone and can be a beginning for our Representatives to find a final solution and foundation to build on. I hope to be at the meeting February 2nd, next Tuesday.

Sincerely,

Royce R. Coles USN (ret.)
101 Dakota Trail
Edenton, N.C. 27932
(252) 221-4774

DailyAdvance.com

Tulls Bay man wins $200 dispute over homeowner fees

By JENNIFER PREYSS
Staff Writer

Monday, May 25, 2009

A dispute over a little more than $200 in homeowner association fees will end up costing the parties to the lawsuit in excess of $11,000 in legal fees.

But that's OK, says Denton Snider, the Currituck County resident who recently won his counter lawsuit against the Tulls Bay Colony Property Owners Association. Snider says his countersuit was filed with the belief that he and his wife Jean didn't have to pay the homeowner association fees, and Chief District Court Judge Christopher Bean's ruling has proven them right.

"The judge ruled 100 percent in our favor," Snider said. "I was legally in the right all along."

The Sniders were sued by the Tulls Bay Colony Property Owners Association last July after the couple failed to pay their homeowner association fees for two years. According to the homeowner group's lawsuit, the Sniders owed $208.42 in unpaid fees.

The Sniders countersued Tulls Bay Colony, claiming the homeowner group's restrictive covenants do not mention the assessment of fees against homeowners and that the group's bylaws, while mentioning fees, do not specify how they should be used.

Bean apparently agreed, because he ruled in the Sniders' favor, says their attorney, John Trimpi.

"The judge ruled the homeowners association has no authority to assess fees," Trimpi, of the law firm Trimpi and Nash, said. "They (Tulls Bay Colony) thought (the fees) were enforceable, (and the property owners) thought there were required to pay them."

Snider in fact once believed he, too, had to pay the group's annual fees.

A resident of Tulls Bay Colony since 1991, Snider previously served as president and chairman of the Tulls Bay Colony Property Owners Association. In that role, Snider was responsible for collecting the homeowner group's annual fees and enforcing its restrictive covenants. The association's annual fees typically were about $100 per household.

Snider claims that while a member of the Tulls Bay Colony board he was not aware that the homeowner dues were not mandatory.

After Snider left the board, he originally thought he could "opt out" of being a member of the homeowners association, Trimpi said. Snider also thought that by opting out, he would not be required to pay the annual fees.

But Tulls Bay Colony's restrictive covenants don't allow property owners in the subdivision to withdraw from the homeowners association, Trimpi said.

"The restrictive covenants don't allow for it — each member is required to be a member," Trimpi said.

What the covenants don't require, however, is the payment of homeowner fees.

Trimpi said Tulls Bay Colony has the option of appealing Bean's ruling. But what he would like to see is the homeowners group start a voluntary dues program.

"To me it was clear from the beginning (that Tulls Bay Colony) had no authority to assess fees," Trimpi said. "(The Snider's case) allows residents to put to rest the issues involving (homeowner association) dues, and now they don't have to hire lawyers individually to figure that out."

Tulls Bay Colony initially was represented by attorney Donald "Ike" McRee, but after he left the case to work exclusively for Currituck County, attorney Phillip Hornthal of Hornthal, Riley, Ellis and Maland took over their representation.

In an e-mail late last week, Hornthal declined to comment on Bean's ruling, saying he had not yet had a chance to review it.

Basing his information on Tulls Bay Colony's budget for 2008-09, Snider said the homeowner group's legal fees in the case as of May had totaled more than $11,000.

Snider declined to reveal how much he has spent on attorney fees, but he said the amount is less than what Tulls Bay Colony has spent.

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Public Hearing by N.C. House Select Committee on Homeowners Associations
February 2, 2010

Purpose is to provide opportunity for public comment on issues related to the protection and participation of homeowners in the governance of their homeowners associations.

Comments by Larrie Loehr
10710 Collinsworth Ct, Raleigh, NC, 27614
(919) 676-0808

- Former member, Board of Directors, Falls River Community Association (FRCA) and Liaison for Strategic Planning. FRCA named "Very Large Mixed Use Community of the Year" for North Carolina by Community Association Institute (CAI), 2009.
- Former Chair, Citizen's Advisory Committee of the Raleigh Neighborhood Exchange, 2009.
- Former member, North Raleigh Coalition of HOA's (NORCHOA), 2009.
- Former regional manager, Organization Development and Change Management, two telecommunication companies.
- Foreign Service Officer, Navy Officer
- A.B. Political Science, Stanford University; MPA and Ph.D. in public and educational administration, Syracuse University.

Comments

The founders . . .
. . . set fundamental purpose of our government is to promote the "Life, Liberty and Pursuit of Happiness" for citizens.

. . . provided a structure to move this vision forward - a "Constitutional Democracy."

Much has changed in the nearly 250 years since our founding. . . . social awareness has evolved, population grown, technology has opened new ways of living, communicating, governing . . . and a new kind of governance has arisen: the Home Owner Association, or the more inclusive term, **Community Association (CA)**, with mixed resident-commercial members.

The CA - a new level of governing . . .
. . . the CA provides ways for citizens to more directly participate and contribute to their governance. . . . is another level of opportunity, of governing, to improve life, liberty, happiness.

I have been fortunate to directly observe and participate in CA situations and have seen:

- community conflict resolved by an alternative dispute resolution (ADR) process which led to successfully resolving a neighborhood disagreement about a house color.
- breakdowns in an Architectural Review Board (ARB) process which led to a cultural change and successful use of a new, more consistent approach
- multi-neighborhood disagreements with state and city planners about road changes leading to a coalition of associations conducting extensive research into road design with presentations to city and state governments and securing improvements

- a divisive community split over investing in a park facility, resolved by presentations of extensive research by many members, with an emphasis on transparency and finally, an affirmative community vote for the now popular facility.

- a successful effort to identify the Mission, Vision and Themes of an association. From this, the association is learning to set goals based on its themes - Aesthetics, Safety, External Relations, Consistent Covenants, Governance, Community.

all involved voluntary, grass-roots citizen participation. CAs gaining capacity to provide more supportive, less costly social arrangements that improve the lives of association members.

They afford an opportunity to better understand, appreciate and use community assets, local assets - for less expensive, faster, and more appropriate ways of solving local problems, resolving issues, and providing higher quality of life.

This is especially important as older parts of our constitutional democracy are "borrowing out." **We need more of these local solutions that better tap our growing social intelligence, that are smarter, and more effectively use local assets without increasing costs.**

What is needed right now to grow the Associations . . .
. . . Community associations provide a path for asset-based development. What is needed at the state level to grow this asset?

- Publicize the hearings. Form an asset-based CA development team to review and inform the approach and results from the public hearings. Focus should be on the successes of CA's, and the ingredients of that success. Learn of solutions, successes, not failures. The less time spent on failures the more can be spent learning what works, deploy it, learn, and further develop it. All with minimum public expenditures. The information from the hearings is timely and publicity indicates a commitment to act on the data, with urgency.

- Consider placing some focus on HOA's to potential outreach and extension services in higher education, community colleges, and public school curriculums. The emphasis here might be on learning citizenship, from an early age. ***Associations offer fertile ground for learning and practicing civic responsibility.***

- Consider proposing a catalyst for a state-wide association-sponsored "best practice" process. This could be modeled after the Malcolm Baldrige award, the Department of Commerce and Labor program for quality development. It is also used by non-profits.

WARD AND SMITH, P.A.

SAMUEL B. FRANCK, Attorney at Law

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University Corporate Center (28403)
Post Office Box 7068
Wilmington, NC 28406-7068

P: 910.794.4835
F: 910.794.4877
sbf@wardandsmith.com

January 25, 2010

The Honorable Jennifer Weiss
NC House of Representatives
300 N. Salisbury Street, Room 532
Raleigh, NC 27603-5925

RE: N.C. Bar Association, Real Property Section Council
Community Associations Committee

Dear Ms. Weiss:

I understand that you are a co-chairperson of the recently established House Select Committee on Homeowners Associations. The purpose of this letter is to introduce the above-referenced committee of the Bar Association, and to offer that committee's assistance to you and the Select Committee.

The Community Associations Committee of the Bar Association Real Property Section is a recently formed committee, established in recognition of the increased relevance of homeowners associations in North Carolina over the past several years. Our committee is comprised of five attorneys whose private practice includes the representation of homeowners associations, developers, and owners pursuing actions against homeowners associations. One of the purposes of our committee is to contribute to legislative actions applicable to the formation and operation of homeowners associations.

Consistent with that purpose, on behalf of myself and the other members of our committee, I offer our collective knowledge and practical experience as a resource to you and to the Select Committee. We will certainly make an effort to track the issues before the Select Committee, and may from time to time ask the Select Committee to consider specific matters. I hope that you and the other members of the Select Committee will also contact us to seek our insight anytime that it would be helpful.

I plan to attend the scheduled public hearing on February 2, and look forward to introducing myself in person at that time.

Yours very truly,

Samuel B. Franck

SBF:sll
ND: 4833-6014-9765, v. 1
ND: 4815-8314-1125, v. 1
cc: Mr. Robert B. Hobbs Jr.
Chairman, N.C. Bar Association, Real Property Section Council
Ms. Hope D. Carmichael
Mr. Timothy G. Sellers
Mr. James H. Slaughter
Mr. Charles D. Meier

Madam Chairman and Honorable Members of the Committee, my name is Elliott Cornett. I am the Board President of the University Townes Home Owner's Association in Charlotte, North Carolina. We have 342 townhomes in our community.

I am here to talk to you about the increasing problems our community has collecting fees from our home owners. The townhomes in our community are in the $100,000 - $150,000 price range. Our HOA provides water and sewer services, trash removal, street lighting in addition to grounds and building maintenance services.

The monthly fixed costs average $28,500 per month. This is comprised of: $13,000 to the City for water and sewer; $8000 to the Landscaping Company; $4500 to the trash collection company; $3000 to Duke Power for street lights. We are also in a unique situation where the developer had over a half of a million dollars in construction defects – then went bankrupt – leaving us the expense of all building repairs that they negligently caused.

These expenses have to be paid whether the homeowners pay their fees or not. If they are not paid, the City will shut off the water, Duke Power will turn off the street lights, the trash company will not pick up the trash – I am sure you can understand our dilemma. Therefore, we have very little choice but to aggressively go after anyone who has not paid. Unlike a business, we do not charge a mark up, so even if one person does not pay we have an immediate problem – these companies will discontinue service if the bill isn't paid IMMEDIATELY.

The other problem is this only takes care of the base needs of the Association. Our home value is not only the necessities listed above, but other items such as: Pressure washing, pine straw, painting, wood repair – and the list goes on...

Without your help, our home values will continue decline because of the amount of time it takes to collect delinquent assessments and the legal expenses we incur when homes go into lender foreclosures.

Our association leaders, who are volunteers, have to oversee the collections of these monies from the home owners in our community. With the difficult times in the economy, we have had an increasing problem collecting the fees from our members. To collect the fees, we are often forced to turn the accounts over to a law firm and, because of new regulations - that now costs more. We work with an excellent law firm, but when they cannot collect, which happens from time to time, that means the rest of our owners have to make up the difference. That is unfair. I hope North Carolina will come up with ways to make the collection of Home Owner's Association fees easier, less burdensome, and less costly for the association.

I am here today to ask you please help the associations, across the state, that are struggling to pay our bills every month. If a lender repossesses a home, they do not pay the delinquent fees incurred prior to their repossession. It would be fairer to make the lenders pay any accrued amount, like they have to do with property taxes.

I appreciate the service that the members of this committee are offering, and look forward to a good result for homeowner associations throughout our state.

DELINQUENT HOMEOWNERS IN HOMEOWNER ASSOCIATIONS IN NC

February 2, 2010
Crystal Coast Management Consultants
8101-C Emerald Drive, Emerald Isle NC 28594, Phone 252.354.6333
Johnny Cameron, Consultant

Crystal Coast Management Consultants (CCMC) manages 33 homeowner associations representing over 2,200 owners in condominiums, townhomes, and single family homes located from Bogue Banks to Morehead City to Jacksonville to Topsail Island. The company has been in business since 1982, has achieved all the professional designations (PCAM, AMS, CMCA, ARDA), and was recognized as a Community Association Institute Hall of Fame member in 1991.

Delinquent Homeowners in Homeowner Associations (HOAs) are a critical problem in today's economic climate. Associations are typically hand-to-mouth cash flow wise and delinquencies place an unfair burden on neighbors. Most of our Homeowners are second home owners who either vacation at and/or rent their units. Currently, the average delinquency rate for an HOA is 10% and can be up to 35%. Over time this can represent tens of thousands of dollars owed the HOA.

HOMEOWNERS CAN OWE EASILY

It is too easy for a Homeowner to owe money in NC, because:

- Penalties range up to 8% annual interest charges which does not incent a Homeowner

- Delinquent Homeowners still have access to their unit

- Delinquent Homeowners still have their unit insured and maintained by the HOA

- Delinquent Homeowners may seek Mortgage Loan Modification which can cause the loan to remain in limbo for 6-12 months.

- Homeowners can declare Chapter 13 Bankruptcy - Reorganization where a judge can arbitrarily reduce the HOA delinquency significantly (eg, 75%) or Chapter 7 Bankruptcy - Liquidation where the HOA delinquency is wiped out

- Homeowners can refuse mail from the HOA or change their mailing address without informing the HOA with no penalty resulting in significant costs to the Association Manager and/or HOA

- HOA delinquencies receive a low priority in bankruptcy or foreclosure proceedings and in many cases the HOA will not recover any funds owed or even the attorney fees

HOMEOWNER ASSOCIATIONS HAVE FEW COLLECTION TOOLS

HOAs have few tools and many restrictions under current law to force collection. The current options available to a HOA to collect delinquencies are:

- Foreclosure: This laborious process (see attachment) requires mailing certified letters to four addresses for the Homeowner, typically takes 266 days, and costs $3000 in attorney fees. Generally HOAs cannot bid at a foreclosure auction and the proceeds are insufficient to pay for the process much less the funds owed the HOA, so the only real advantage of foreclosure is to get a new owner who will pay their assessments.

- Small Claims Court: This option can be used when the delinquency amount is less than $5000 and the owner resides in the same county as the HOA unit. CCMC has Homeowners who live all over the US and serving an out-of-state Homeowner is problematic.

- Collection Agency: This option is just starting to be used and its success has not yet been determined.

- Payment Plan: Most payment plans turn out to be stalling tactics and recover few funds owed the HOA.

- Privileges Suspension: HOA Boards of Directors are starting to suspend privileges (ie, amenities access) for Homeowners to incent their delinquency payment.

UNFAIR BURDEN ON NEIGHBORS

Failure to pay Regular Assessments (dues) is unfair, but when it involves Insurance Assessments or Special Assessments the situation can become truly critical for HOAs. For example, one association has 12 units and each owner pays $919 per month for insurance coverage. When two owners failed to pay for almost a year this turned into a major cash flow problem for the HOA. Another example is an association needing to replace its Waste Water Treatment Plant as mandated by the NC DEH or DWQ. These projects produce special assessments ranging easily from $5,000 to $15,000. How does an HOA complete the project with a significant number of delinquencies?

SOLUTIONS

HOAs need more tools to strongly incent Homeowners to pay their assessments, such as:

- Deny the Homeowner use of a second home
- Allow the HOA to rent an abandoned unit and collect the rental income
- Increase the penalty for a delinquent Homeowner
- Higher priority for a HOA lien at foreclosure and bankruptcy
- Allow Association Managers to charge a collection fee for their administrative services

In addressing this issue, the NC Legislature should consider the rights of non-delinquent Homeowners who unfairly and precariously carry the burden of delinquent Homeowners.

9/14/09

TIMELINE FOR LIENS AND FORECLOSURE

ELAPSE	DAYS	EVENT
30	30	**LATE NOTICE FROM MANAGER** - Wait for payment with 15 days
45	15	**DEMAND LETTER FROM MANAGER** - Pay within 15 days or legal action starts
65	20	**DEMAND LETTER FROM ATTORNEY** - Sent by certified mail to ALL known addresses of Owner - Wait 15 days for Owner to respond
85	20	**CLAIM OF LIEN** - No response from Owner within 15 days - After online title search to ensure correct Owner and No pending foreclosure - Claim of Lien filed with court - Lien Sent by certified mail to ALL known addresses of Owner - Wait 15 days for Owner to respond
145	60	**COMPLAINT AND NOTICE OF LIS PENDENS** - Complaint filed with court to enforce lien and notice of lawsuit for any one doing title search - Sheriff in Owner's resident NC county serves Civil Summons, if outside NC serve by certifiefd mail - Sherrif has up to 60 days to serve - If cannot be served, then Alias and Pluries issued by court, repeat service - Notice filed in local newspaper for three consecutive weeks - Wait 30 days from date notice served or first notice publication for Owner to respond
150	5	**MOTION FOR SUMMARY JUDGMENT** - No response from Owner within 30 days after being served - Motion for Summary Judgment filed with court, schedule case for court
190	40	**ORDER AND JUDGMENT** - Summary Judgment hearing in court depending on court's schedule - Judgment entered - Notice of Judgment to Owner - Wait 30 days for Owner to respond
220	30	**NOTICE OF RIGHT TO HAVE EXEMPTIONS DESIGNATED and MOTION TO CLAIM EXEMPT PROPERTY** - If Owner resident of NC, notice of Right and Claim served by Sheriff or certified mail - Wait 20 days - If Owner not resident or corporation of NC, skip this step
235	15	**WRIT OF EXECUTION** - Writ issued by court and served by Sheriff for foreclosure of real property or forfeit of personal property - Sheriff has 90 days froms date of writ to sale of property - If Owner can pay then process stops - Decision on (1) foreclosure sale or (2) confiscate financial assets - Request Supplemental Interrogatories to find bank accounts/assets - Wait 30 days for response - If Owner does not respond, then file Motion to Show Cause seeking Contempt order - if Owner responds, Sheriff confiscates financial assets including bank accounts and rental income
255	20	**ADVERTISE PROPERTY FOR FORECLOSURE SALE** - If Owner cannot pay, then Sheriff advertises property for foreclosure sale for 15 days
265	10	**AUCTION SALE** - Sheriff's sale conducted - Bid accepted then wait 10 days for upset bid - If No Bid accepted then Owner retains possession
266	1	**SHERIFF'S DEED TO NEW OWNERS**

LEISA EL-SHABAZZ

5709 Yachtsman Court
Browns Summit, NC 27214
Phone 336-324-8717

February 2, 2010

Public Hearing
NC State Legislative Offices
300 N. Salisbury Street
Raleigh, NC 27603

Dear Attendees:

We are members of Storrington HOA in Browns Summit, NC. This is the first home we have owned together, and our first time as members of a homeowners' association. Needless to say, we never expected to find ourselves in the midst of the battle we are currently fighting.

Our Board of Directors had never been very open to the community. We would pay our dues every month, and every now and then, everyone would receive a scolding letter about someone breaking the rules in the community. However, in mid-November we received a tip from the wife of a disgruntled board member about missing and misallocated funds, and our quest began. We started with the police department, the magistrate, the Secretary of State's office, and the Attorney General of NC. Everyone said we had to contact a private attorney. We did, but he wanted to charge us $1,500 to file an injunction. Instead we contacted the District Attorney's office, and fortunately we were given advice on how to go about the investigation ourselves. This is what we are in the midst of right now.

Our question to the State is: what do you do as a homeowner if you discover that your Board of Directors is defrauding the community? And what do you do if the management company is participating? We are quite certain that this is our situation. We have physical evidence of self-dealing which we will be turning over the District Attorney's office, and we are certain about other instances. In order to discover them, however, my husband and I have decided to follow the paper trail ourselves before calling for a full audit.

Fortunately, my husband and I have the time and the ability to fight this battle. However, what about those who find themselves in this predicament without the time or know-how to protect themselves and their neighbors?

Sincerely,

Leisa El-Shabazz

SELECT COMMITTEE ON HOMEOWNERS' ASSOCIATIONS
TUESDAY, FEBRUARY 2, 2010 – 2:00 PM

COMMENTS/QUESTIONS SUBMITTED BY:

PIERRE L. GIANI
224 BEECHWOOD ROAD
FRANKLINTON, NC 27525

ISSUE 1

At our last years Homeowners' Annual Meeting the following rule was "voted in" and it is this change I wish to inquire if it is in accordance with the State Law.

For 9 years, the Board of Directors' Meetings were open to all members. The new Board adopted the following policy:

> "if a member wishes to address the Board on one or two issues, the member submits those items to the Board. The Board will look at those issues and tell the member how much time is allotted at the next meeting for presentation of the issue(s), as well as the place and time of the next meeting. The member leaves the meeting at the end of the presentation."

Also, members who want to attend the Board meeting and not participate other than being present are not permitted access.

Is it permissible for Board members to exclude Homeowners from Board Meetings?

ISSUE 2 Minutes of Board of Directors' Meetings

a) The minutes of the Board of Directors' Meetings are less than complete. There is never any Treasurer's report attached, there is no mention of who made a motion or who seconded the motion. There is no record of voting on approved issues. The author of the minutes is not identifies.

b) The minutes are not distributed in a timely manner – (i.e. the minutes of the Feb. 12, 2009 meeting was received on Sept. 16, 2009.)

ISSUE 3

What options exist when dealing with Homeowners' and/or Board Members who violate Bylaws and Protective covenants?

Comments for the House Select Committee on Homeowners Associations
Public Meeting February 2, 2010

In my case this Association is Sterling Park Townhomes, in South Raleigh.

To be brief, we have found that homeowner's in the Association are completely at the mercy of our Board of Directors, and have, for any practical purposes, no enforceable legal rights. We have seen our Board enforce our covenants and bylaws where it serves their own purposes, and feel free to completely ignore them when they do not. There is nothing the homeowners can do about it.

Even the most basic functions of the nonprofit corporation, such as having to have an annual meeting in a timely manner where homeowners can be heard and hold elections and vote for new Board members, and the requirements to provide an annual financial statement to the homeowners exist only at the pleasure of the members of the Board.

Quoting to our Board our own bylaws, and even North Carolina General Statutes purporting to regulate Planned Communities and Nonprofit Corporations is simply ignored by the Board when it pleases it to do so, knowing with the high cost of litigation there no action the homeowners can afford to take.

In my own case I spent months going around to various agencies in downtown Raleigh trying to find someone somewhere who might look into what was going on in our Association. I found no one willing to listen.

We found that even hiring an attorney to enable us to get a look at our financial records was useless. When we arrived to look at the records we were simply told that the records we were looking for could not be located, and there was nothing we could do.

Homeowners find themselves locked into a position where there is no accountability in how the community is run, no one willing to listen, and no way out save to sell their homes and move.

I encourage the House Select Committee on Homeowners Associations to find some way to regulate these Associations and put teeth into the General Statutes regulating them.

I will make every effort to attend the Committee meeting on February 2, and will welcome any chance to have these comments entered into the record.

Brian Vanlandingham
2621 Sterling Park Drive
Raleigh, NC 27603
919-834-6674

Brian Vanlandingham

UCNLF
UNION COUNTY
NEIGHBORHOOD LEADERS
FORUM

11001 Magna Lane ● Indian Trail, NC 28079 ● 704-661-7403

Comments of Roger J. Fish, Ed.D., UCNLF Secretary, to
Members of the NC House Select Committee on Homeowner Associations
February 2, 2010, Legislative Office Building, 300 N. Salisbury St. Raleigh, NC.

Representatives Weiss and McGee and other members of the Select Committee:

Thank you for the opportunity to contribute to this public hearing. My wife and I moved from Maryland to North Carolina on Thanksgiving Day 2004 to be with our six-month old grand daughter. We have been thankful to live here ever since. We reside in Taylor Glenn[1], an association community in the Town of Indian Trail, Union County.

I offer this testimony from the standpoint of one who served as a four-year board member in a homeowners association and in my current capacity as secretary of the newly incorporated non-profit, the Union County Neighborhood Leaders Forum.

Home Owner Associations were a new thing to me. I previously lived in a municipality where the issues facing residents were governed by the city or the county. Now I was living in a community governed at the state level by something called the NC Planned Communities Act – Chapter 47E and our association's "Covenants, Conditions and Restrictions". In North Carolina I came to understand that in reality HOAs play a role akin to local government. HOAs have "taxing powers" called annual fees and have

[1] The Taylor Glenn of Indian Trail Home Owner's Association was incorporated on January 30, 2002 with the North Carolina Secretary of State. From 2002 to the present, Taylor Glenn has been under five (5) management companies, four of them contracted by the developer. I joined as a member of the first interim Board in May 2005 under the developer. I served as an elected board member and board Secretary from May 2005 thru January 2009. Taylor Glenn transferred from developer to homeowners in October 2008 when the Board of Directors signed its first contract upon advise of counsel. Taylor Glenn has approximately 460 single homes at present and 500 upon completion. We are also the "master" association for some 45 town homes. The HOA offers a number of amenities including a clubhouse, an adult pool, a child wading pool, an exercise room, tennis courts, two playgrounds, a soccer field, and acres of common area including three run-off ponds. Our approved budget for 2010 is over $250,000.

[2] The Town of Indian Trail is home to over 26,000 residents and is a contender for being the largest town in Union County. There are seventy-eight (78) subdivisions and counting in Indian Trail including some 27 association communities representing approximately 60 percent of the population. In 2008, Union County had approximately 193,255 residents who live in some 500 communities.

enforcement powers that permit the withdrawal of access to amenities, the levying of fines for failure to comply with the covenants, and the application of liens and foreclosure on a home if a resident refuses to rectify the issue at hand. Likewise, HOAs are champions for their communities and defenders of property values.

I also found that our Board like so many others did its work largely alone, in isolation of even neighboring HOAs down the road. As time went on some of us began to reach out to other HOAs related to big ticket items like management companies, landscapers, and pool companies and then to other issues related to the upkeep of private roads, private cable companies and HOAs collecting cable fees as part of annual assessments, vandalism and juvenile mischief including graffiti, drug use, auto break-ins, speeding vehicles in the neighborhood, junk cars, unkempt yards, free range dogs, fences falling down, and so forth.

Over time it occurred to me that there ought to be a local venue for HOA and community leaders to meet, talk about issues, share ideas and discuss solutions. I found it almost impossible to find out who were the leaders in these other communities. No one seemed to have a list let alone an up-to-date list. It was at this point that I met the Mayor of Indian Trail who proposed creating an HOA and community leader's forum in the town to meet these needs.

I spoke in support of this concept to the Indian Trail Town Council on September 9, 2008. Five months later, on January 9, 2009, a community leaders forum was held to discuss issues faced by neighborhoods with and without homeowner associations. Approximately 70 representatives from twenty Indian Trail neighborhoods attended. The meeting was sponsored by the Town of Indian Trail and hosted by Mayor John Quinn. Others in attendance included town staff, several town council members and the Chairman of the Union County Commissioners.

Neighborhood leaders met several more times independently and concluded that an independent organization was needed to provide a venue for them to communicate and address local issues that affect them. An Interim Board was elected, expanded the vision of inclusiveness of the group from the town to the county,[2] and incorporated as a non-profit organization in North Carolina. The organization is called the Union County Neighborhood Leaders Forum (UCNLF).

We have all heard horror stories about so-called "run-away" and "abusive" HOA boards. And there are websites devoted to highlighting and broadcasting these stories. The media report them as human-interest stories and of course they are. Sometimes they are true but from my experience as a board member the entire story is often not told and critical information missed or ignored in the rush to meet a deadline.

I conclude my remarks with these observations.

1) Associations are creatures of the state. Doing away with associations may not be an issue before this body today. However, if the legislature does't like associations, you could recommend doing away with them and require local government to deal with the problems now taken care of by volunteers. The fees raised by associations would be a revenue bonanza for the same local govenments. If, on the other hand, your deliberations are to retain and improve associations, then I urge you to support and strengthen boards and not weaken them.

2) Board members need opportunities for on-the-job training and support through educational and other outreach programs and resources. That is where pioneering local organizations like ours can provide a valuable service connecting HOAs each other and with experts and useful materials.

3) Associations are generally responsive to positive legislative changes, e.g., to provide due process procedures. Taylor Glenn established an adjudicatory panel consisting of community volunteers other than board members to hear homeowner's complaints. This was not particularly burdensome and I wrote the procedures for our bylaws. But like anything else seeking the perfect legislative solution to a problem can be the enemy of the good.

4) Respectfully, when you consider legislation affecting associations please do not make it impossible for us to carry out the responsibilities you have imposed on us. As board members we often have to remind our residents that we live in a community with covenant restrictions. Each of us chose to live here. Residents have elected board members to balance the needs of the one against the needs of the many within a set of rules approved by the county and guided by the Planned Community Act.

My purpose here today is to inform you that we have formed a county-based organization to offer seminars, panel discussions, and other educational programs for HOA and neighborhood leaders. The job of a board member carries with it important responsibilities that affect hundreds of families. My experience has been that board members take this responsibility very seriously. UCNLF hopes to help them be better prepared.

Thank you.

union county
NEIGHBORHOOD LEADERS
forum

Who We Are

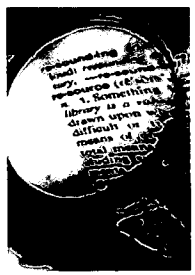


Cooperation is the key to our success

Union County Neighborhood Leaders Forum is a member supported organization dedicated to assisting local neighborhood leaders and volunteers build and maintain thriving communities.

UCNLF is a non-partisan, non-political, non-profit organization that encourages and provides a forum for neighborhood leaders to communicate and address local issues that effect many neighborhoods with and without homeowners associations (HOA).

UCNLF focuses on any and all issues that affect the safety, vitality, and desirability of neighborhoods throughout the county. There are many valuable resources and experiences in our communities. UCNLF works to collect and disseminate that information for the benefit of every neighborhood .



Resources come in many forms.

By aggregating this type of information, we intend to spur new ideas, motivate communities to action, and ultimately improve the condition of the entire county.

Please join us and help make Union County a better place for our family, our friends, and each other.

Our Vision Statement

Our Vision is to support neighborhood leaders in building and maintaining thriving communities.

Our Mission

Our Mission is to provide a venue for neighborhood leaders and volunteers to:

- *Facilitate communication among HOA and other neighborhood leaders and volunteers;*
- *Identify common needs, issues and problems, and share possible solutions; and*
- *Serve as a unified voice to town and county leaders.*

Our Activities

Activities In the furtherance of its mission, UCNLF will:

- *Provide and perform services, such as planning and hosting training seminars for neighborhood leaders and volunteers, aggregate and disseminate useful information via our website, and regularly update our members on issues that may impact their local communities ;*
- *Coordinate activities that engage our members and volunteers; encourage participation and involvement in committees, event panels, member website , etc.; and,*
- *Solicit and acquire funds and other support from all available sources to advance our goals.*

Planned Activities

Quarterly Symposiums

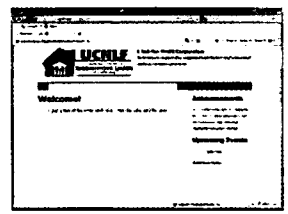
Each quarter, UCNLF will host a symposium on topics our members want to learn more about. Visit our website for an updated agenda.

Leadership Development

Many subdivisions, even those without an HOA, should hold regular meetings with its residents. We have assembled manuals on issues like meeting planning, consensus building, HOA responsibilities, board member duties, etc. that are available to our members for free.

Website Resources

Our website (http://www.ucnlf.org) is our central clearinghouse for information, tools, and virtual idea exchange. Things you'll find online:



- Community event planning templates,
- Online event calendars,
- Email list management tools,
- E-newsletters,
- Community forums,
- FAQ's,
- Specialty vendors directory, and
- Useful downloads from our digital library.

Please note that some features are limited to regular members and/or affiliate members.

UCNLF Membership

Category/Fees

Sign up for:	Fee
☐ HOA Membership	$ 100.00
☐ Associate Member	20.00
☐ Affiliate Member—Gold	500.00
☐ Affiliate Member—Silver	300.00
☐ Affiliate Member—Bronze	150.00

HOA Membership entitles each HOA to a vote, 5 passes to quarterly events, full-access to protected website materials, and member directory.

Associate Members receive significant discounts to quarterly events, member e-bulletins, and regular access to website resources.

Affiliate Members receive advertising space on our website, host information booths, get ad space on all printed materials, and have access to member directory[1], depending on their membership participation level.

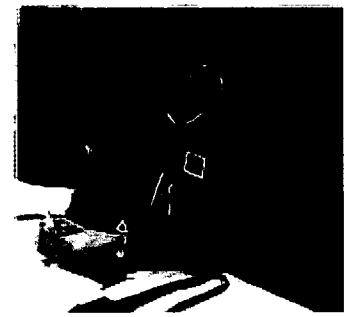
[1] Membership directory limited to one-way communication through UCNLF website. Personal information is never disclosed to Affiliate members. See our website at www.UCNLF.org for more details.

Please make checks payable to:

Union County Neighborhood Leaders Forum
c/o Eric DeGraff, UCNLF Treasurer
1015 Wadsworth Lane
Indian Trail, NC 28079

Kathy Kukor

UCNLF Chairperson
&
President, Colton Ridge HOA



I saw the value and benefit of becoming actively involved with UCNLF early on. The basic premise is simple: we all have come across challenges in our efforts to improve and/or maintain our home, our street, our neighborhood, and by extension, our town.

The purpose of UCNLF is to aggregate and disseminate the experiences, lessons learned, and best practices applied successfully by local individuals. UCNLF provides the resources local resident volunteers and neighborhood leaders need to validate their work, minimize their efforts, and share their experiences with their peers.

I'd like to personally invite you to become a member today.

Members of the Board

Kathy Kukor, President	Colton Ridge
Samantha Towns, Vice Pres.	Villas of Sun Valley
Eric DeGraff, Treasurer	Wadsworth
Roger Fish, Secretary	Taylor Glenn
Favio Perez	Arbor Glen HOA

UCNLF
UNION COUNTY
NEIGHBORHOOD LEADERS
FORUM

Membership Information

Solving Common Problems by Sharing Experiences

www.ucnlf.org
(704) 661-7403
UCNLF a non-profit corporation

Kelly St. Clair

HOA Opinion Statement

Highland Creek Community Association

Date: February 1, 2010

Re: Assessments and Record Keeping

I am Kelly St. Clair, a member of the Highland Creek Community Association Board of Directors, and am the Community Affairs Liaison. I am currently serving my second year of the four year term which residents have elected me to.

Highland Creek is one of the largest Master Planned Communities in North Carolina with approximately 14,000 residents residing in approximately 4,300 homes. Our neighborhood spans two counties, Mecklenburg and Cabarrus.

Our annual community budget, to maintain our infrastructure and provide necessary services, is approximately $2 million. This budget is funded completely by resident's dues (assessments.) Our Board consists of nine very dedicated residents who volunteer their time, talent, and expertise, to ensure our community's ability to fund our ongoing obligation to provide a broad spectrum of unique amenities and activities to the residents, while operating conservatively within our budgeted means.

Occasionally, we do have problems with collection of assessments. Most of the time, though, our residents' assessments are kept current. Interestingly, however, when our five community pools open in the month of May, many slow-paying residents rush to pay their dues, since this is one of our requirements to enable access to these community amenities!

Unavoidably, there will always be a homeowner experiencing one type of hardship, or another. In these rare cases, we work compassionately, and in good faith, with our homeowners, to establish payment plans which assist them to bring themselves current. If they continue to have difficulty, we willingly re-negotiate with them yet again.

Very rarely, a few homeowners, having failed to meet their obligations in good faith, have placed us in the unfortunate position of having to impose the more restrictive policies and procedures we have in place to assure that they meet the financial obligations they have agreed to. We do all in our power to avoid having to implement these stronger policies. Only after having exhausted all possibilities for compliance, would we take the first steps leading to liens or foreclosures. Even then, we are still willing to work with the resident. We strictly comply with our policies in working with each resident to ensure equitable treatment of all homeowners.

Currently, we have just 11 delinquent homeowners, totaling arrears of $29,000.00. Just 11 major delinquencies out of 4,300 homes. That's .3%. Our Board believes wholeheartedly, that our ability to willingly work with our residents, while also having the ability to pursue stronger means of ensuring financial compliance, definitely accounts for the strength of Highland Creeks' financial viability.

This strong financial standing is a benefit to all the homeowners of Highland Creek. It keeps our neighborhood stable and desirable. Our resident-comprised Board of Directors, believes that this approach must be undertaken to protect the integrity of our Community's interests.

Indeed, it has proven very successful in allowing us to assist most residents to eliminate their seriously past due balances. Overall, our residents understand, support, and appreciate these HOA efforts, and are well informed of the benefits and responsibilities of living in the Highland Creek Community. Our residents receive copies of the neighborhood covenants at the time they purchase their homes, and as such are implicitly agreeing to these covenants when they sign their closing documents.

Our annual, outside, audit confirms our very meticulous record keeping. Policies and procedures are in place for any resident to be able to review the minutes of their Board of Directors.

Highland Creek Community Association Board meetings, times, and locations are posted and all residents of Highland Creek are welcome to attend. Our newsletter, our website and our bi-monthly neighborhood meetings keep residents well informed of board activities and our residents hold us accountable for protecting their investment in this wonderfully inviting community.

Thank you for allowing me the opportunity to personally speak to you today on behalf of the Highland Creek Community of neighbors and its' Board of Directors.

Gordon Corlew

OUTLINE FOR PUBLIC COMMENTS
RALEIGH, NC
FEBRUARY 2, 2010

- Gordon Corlew
  - I have been a property owner of St James since 1999
  - I am beginning my second 3-year term as elected St James POA representative; we are unpaid
  - Also the elected Treasurer of the Association

- St James POA
  - Over 4000 property owners
  - We maintain over 65 miles of private road
  - We maintain 100's of acres of common property
  - The budget is $3.5million per year
  - Almost all of this from POA assessments and fees
  - We currently have about $100 thousand in accounts receivable over 90 days old

- The ability to collect these assessments and fees is critical. Without this income the POA can not meet it's **Contractual Obligations** or meet our **Fiduciary Responsibility** to the property owners

- There are two basic reasons that assessments, etc end up 90 days or more overdue:
  - It is a low priority to some builders and investors. They are not overly concerned with placing additional burdens on the other property owners.
  - There is an economic issue with an individual property owner
  - In the case of the individual property owners it is normally handled by scheduling out the payments
  - When that is not successful then it is necessary to use the lien process and the threat of foreclosure
  - To the best of my knowledge we have never had to actually foreclose to resolve an issue. Either we have collected or there has been a bankruptcy. One investor group left us with $23K in bad debt during 2009.
  - I know of no case of non-payment of assessments due to a protest against POA policies at St James

- The closest we have come to a foreclosure was in 2008 when a spec home sat for almost a year in a partially complete state. It was an eyesore and a safety issue. Scheduling a foreclosure hearing was necessary to encourage the bank to proceed to foreclosure, and ultimately sell the property to another party. The new party completed the construction in another 6 months. Without the treat of foreclosure that house would probably still be partially complete.

I urge you not to degrade or eliminate the only tool property owner associations have in collecting assessments and fees from those few people and corporations that will not carry their share of the cost for the communities in which they have invested.

COMMINIQUE

DATE: 8 February 2010

FROM: Wm.F. Hargrove Jr.

TO: North Carolina Select House Committee
on Homeowners Associations

SUBJECT: Written Suppliment to Speech #43
Given at Public Hearing 2 February 2010

I. INTRODUCTION: SPEAKER #43 OF 44

My name is a Mr. William Hargrove and I live at and own A2 Graham Court, a unit in Graham Court Condominiums,located at 233 McCauley Street in Chapel Hill.

I not going to thank the people sitting up there presiding because (a) they've been thanked so many times already that it's gotten banal and (b) I I'd like to wait and see their "work product", i.e. the legislation they draft and pass on this matter before I decide whether to thank them or not.

By my own freely stated admission: I'm fairly ruthlessly "results oriented".

So further On that score: The people I DO want to thank -- and maybee some of them aren't even in this room SO I HOPE YOU PEOPLE UP THERE MAKE SURE THAT THEY SEE THIS -- are the support staff -- aides, administrative assistants, secretaries -- by whatever name you want call them by.

Because: I didn't get wind of this meeting until 29 January and upon giving my e_mail closer attention this morning I found the hot link that was provided hung my laptop everytime I clicked on it (That's why personally I have an attavistic fondness for flat ASCII...), and so for whatever reason I found myself early this morning knowing ONLY WHEN this meeting was going to be held and pretty much NOTHING ELSE.

Clearly, "Brother Murphy" had decided to look out for me this morning...

It took going through a chain of three(3) telephone referrals to get the critical information I needed. At first I thought I was being given the classic "run around" and was going to end up where I started. But no: At the end of the chain I NOT ONLY LEARNED WHERE BUT ALSO GOT ALLOTED SPEAKING TIME.

SO KUDOS TO THE SUPPORT STAFF! Early in my professional life I heard a saying, "The other man's secretary is just as important to you as your own". It's no truism.

That said, NOW TO THE MEAT...

II. A DESCRIPTION OF GRAHAM COURT CONDOMINIUMNS,
READ: PARADISE...

Graham Court is quite small as condominium complexs go: It consists of two three story buildings of 12 units each for a total of 24 apartment like units of roughly 1000 heated square feet. Originally built in 1928 as apartments which rented for a then fairly expensive $2.50 per week, it was completely rennovated and converted into condominiums in 1985. Located Five minutes WALK from the UNC Chapel Hill campus, ten minutes WALK from downtown Chapel Hill, 30 minutes WALK from downtown Carrboro, and in a designated historic district (the football coach "Bear" Bryant and the baseball superstar Ted Williams are reputed to have lived at Graham Court while UNC undergraduates at UNC) in one of Chapel Hill's most prestiguous (Read: expensive) neighbohoods one would think that any Graham Court owner with a paid up mortage quite literaly lives in paradise.

But: Even paradise has its problems. "You can't run away from trouble. There ain't no place that far." -- Uncle Remus.

III. UNDERLYING CAUSES, READ: A RECIPIE FOR BREWING HELL IN PARADISE...

The trouble with living at Graham Court is parking. A 36 space capacity parking lot with absolutely no room for expansion means that each of its 24 units is alloted one reserved parking space and one "hunting liscense" only. It was thought at the time of inception of the complex in 1985 that most Graham Court purchasers would be well-to-do single professionals (read: yuppies). A few were and a few still are. This would have been tight but tolerable.

But then came "inintended consequences"...most units were bought by well-to-do parents of UNC students who sold their units for a handsome profit once their childern graduated. However most didn't: They realized after their childern moved out that they owned a rental property that was virtually certain to be occupied, produced the yeild of a high grade corporate bond when it was, and that kept on appreciating to boot. So rather than sell and pay capital gains, they continued to hold on to their Graham Court unit(s) and contining to rent them, staying fat, dumb, and happy -- not as residents living in paradise, but as absentee landlords renting out a small piece of paradise instead.

The ultimate consequence of this conflict of interests between live in owners and owners who rent has been to create conflict everlasting (read: a recipie for creating HELL IN PARADISE).

TO MAKE HELL IN PARADISE: Start with 24 empty virgin Graham Court units. Populate the complex with say, 4 owners who own and live in and the other 20 units with owners who rent their units out to UNC Students for a ratio of roughly 5 absentee renters for each 1 resident owner. Then sit back and wait. Over time an explosive situation will be created in much the same way as leaving a bnuch of oily rags in a confined air space. The relatively high rent of a Graham court Condominium (about $1250/month) will motivate the student renters -- each of whom on top of being able to walk to campus wants his/her own car -- to fill the rented units to maximum capacity. The absentee landlords in their turn tend to look the other way because by virtue of not living there parking is no concern for them -- but the pressure in turn to keep a unit rented at $1250 is a powerful motivator. It's an extreme scenario but if you do this arithemtic it comes to a possible 65 vechicles

competing for those before mentioned 36 parking spaces. Serve hot...

ULTIMATE RESULT: Conflict ever lasting between the factions of resident owners, absentee landlords, and student renters. Resident owners view studentsasdisrespectfull college punks who are forever enchroaching into their parking spaces, student renters view these live in owners as villians (there are many more graphic words that could be used here, but let's leave at this...) who live to make their lives miserable by having their cars towed, and absentee landlords view it all as just a mess they really rather would not be bothered with no matter how it resolves, just as long as those rental checks keep on comin' in...

I am dealing in generalities. An example (but keep in mind that it is only one of many) will bring this into concrete focus...

IV. HELL IN PARADISE: AN EXAMPLE FROM THE PARKING LOT...

This acrimony between different factions has been ongoing almost from its inception in 1985. But it did not escalate into direct violence until 2001, about 9 years ago when ourtowing man filed charges of assault with a deadly weapon against a student resident. The charge arose out of an altercation in the course of his attempting remove an improperly parked car from the Graham Court lot.

It is noteworthy that at that time a lot of owners thought highly of our towing man. He had been employed by Graham Court for roughly a year and in an owners meeting roughly a month before he was reinstated by a vote of the owners. The vote was an overwhelming majority in his favor with only one owner dissenting.

The student facing the assault charge was no ordinary renter. He was a either a law student or a medical student (I forget which but it was either one or the other) and additionally was living in a Graham Court unit that had been purchased by his father so his offspring could live 5 minutes walk from campus during his tenure in law schooland also he could make money off of appreciating real estate values in the manner described above.

It is hard to prove but judging from subsequent events, I suspect this particular father was not only well-to-do but in addition was also politically well connected, and by that I mean he was "good friends" with the then president of Graham Court Homeowners Association.

Our then homeowners association president had more than enough experience to be president of a homeownersc association: he was (and may still be) mayor of a substantial North Carolina town. And having watched this indivdual in action in our owners' meetings and board meetings even I grudgingly have to admit that he is very good and what he does, and by that I mean GOOD AT TOWN LEVEL POLITICS.

The actions/response by our homeowners president was -- without notice and with no showing of cause to the ownership at large -- to make our towing man's continued employment by Graham Court contingent on his having the pending assault charge against the student in question dropped.

The rationale of our then president's position was -- in his own words -- "the DA would just love to have one less case" and that the student facing charges "was studing to be a lawyer and he can't have that on his record".

However when on the advice of his attorney, our towing man told the homeoners association president that it was no longer his call or place to drop criminal charges once they have been filed, the HOA president fired him immediately.

I thought otherwise in spades then and I think otherwise in spades now.

My position on the matter was and still is that that student should have stood trial and if found guilty not be admitted to the bar anywhere in the land, Ever.

Furthermore, I thought then and still think now that our then homeowners association president should have been indicted and made to stand trial under NC GS 14-226, i.e.attempting to bribe, threaten, or otherwise influence a prorsecuting witness in a crimminal proceeding, WHICH IS A FELONY. Whether a convicted felon can hold the office of mayor in North Carolina I haven't looked up, but it certainly would (and should) have give any mayor's constituency something to think about come election day.

Personally however I think he deserves (and still does) the same fate and treatment that Durham County's now nationally infamous Mike Nifong ended up getting.

It didn't quite turn out my way...

In Court the defense lawyer for the student of course painted our towing man as a villian. The high point of his cross examination came when he asked question, "Are you still employed by Graham Court?"

It is astonishing (to me anyway) that the prosecuting attorney did not object to the question for being irrelevant.

But more astonishing still was our towing man's answer, which had it been followed up on correctly by either the prosecutor or the judge could very well have backfired bigtime on the whole defense team, lawyer and client alike. His answer: "No longer. They terminated me because I wouldn't drop the charges."

But most asonishing of all was the subsequent actions of the prosecuting attorney and the presiding judge. Not only did they do nothing when confronted with clear probable cause of a material violation of NS GS 14-226 in open Court, they retreated into chambers and comming out some minutes later, the presiding judge dismissed the case without comment.

I was insensed enough with the inaction of the judge and the prosecuting attorney even as a private citizen that I drafted a petition for issuance of Crimminal Summons by Superior Court. (A violation of NS GS 14-226 is a felony).

But my actions however zealous and well motivated, weren't fast enough. The student's defense team was ahead of me: By the

time I had gotten around to drafting the petiton and filing it, I found to my consternation that the court file for that case had in the meantime been expunged...

This little story is by far and away NOT the only one I have, but it is the single worst, most outlandish, and mostly loudly illustrative of what goes on. One thing can be said for the Graham Court parking situation however: It has provided me with lots of grist for the mill. Whenever I have company I invariably end up opening the kitchen window blinds, waiveing my arm out towdards the parking lot outside in a broad sweeping motion, and boldly say:

"DO YOU KNOW WHAT THIS IS OUT HERE? IT'S THE WATER RIGHTS TO LOS ANGELES, THAT'S WHAT. THE ONLY REASON WE HAVEN'T A DEAD BODY TURN UP IN OUR CRAWL SPACE IS THAT THERE IS NOT ENOUGH MONEY INVOLVED TO MOTIVATE BEHAVIOUR THAT EXTREME."

V. HELL IN PARADISE: REPURCUSSIONS IN THE HOMEOWNERS ASSOCIATION

This incident also had its effect on the homeowners association meetings also. Soon after the above incident in the parking lot I took it up in a homeowners meeting by attempting to ask the president what specific things our towing man had done to motivate his firing and what specific people he had talked to prior to firing him. Regardless of what the prevailing sentiment among other owners was, as an owner who paid homeowners dues I felt on principle entitled to an answer.

The response I got in the homeowners meeting was to be shouted down by the association president, effectively being disallowed from speaking. I was not alone in that sentiment: One owner told me privately after the meeting had adjourned that she felt I HAD NOT SHOUTED BACK LOUDY ENOUGH.

I got no support from the other owners present of course: The before stated ratio of 5 absentee landlords for every 1 live in owner meant there was no way I could prevail. But to that degree at least the democratic system works: The action of the complex did in fact accurately reflect its constituency.

The association president apologized to me privately after the meeting also, but given his subsequent actions I looked on it as one more disingenous ploy of a town politician. When pressed for the names of specific people he had talked to and what subsequent actions of our towing man he had taken into account prior to firing him and to ignore a vote of the homeowners association to keep him on, the only answers I got were,"I not gonna take the stand" and "I'm not gonna get in an interigaion situation."

But subsequently I gradually realized that I was being excluded from board meetings. Nobody notified me or said anything out loud of course: These people all knew that I would I would have no compunction about asserting my rights as an owner to the point of going to Court if necessary, and so they tried to keep it a secret (at least from me) as long as they could.

Sound paraniod? Well, even paraniods have enemies. And more: There are situaions and scenaios where, "Only the paranoid survive" -- Andy Grove (CEO, Intel Corp.).

Happily for Graham Court, that particular association president is no longer president, but his influence and the mess he made with that improper dismissal has lingered long after his tenure...

Roughly two years ago a call for volunteers to serve on the board was made in the Graham Court newsletter. For a variety of reasons, (1) that the past president whom I had issues with was no longer on the board, (2) my longevity at Graham Court (26 years, which far exceeds any other owner), and (3) the specfic knowledge I have accumulated about this complex over those years, I put my name forward.

I would never have anticipated what hapened next: The president immediately took on a look of nervous, surprised fear, hesistated momentarily, then in desperation looked around the room and asked if there were any other volunteers, and seeing one other owner diffidently raised her hand -- a new owner of less than a year. I think had that individual not raised her hand he would have started looking for a cock roach to nominate to run for the vacant board seat. Having found a willing volunteer other than myself visibly relaxed and immediately thereafter instructed everyone to WRITE THEIR CHOICE FOR BOARD MEMBER ON A PIECE OF PAPER AND PASS IT TO HIM RATHER THAN HAVE A SHOW OF HANDS for the first private ballot since the inception of Graham Court Condominums in 1985.

Initially my reaction was to be flabbergasted. I am a self admitted contrarian: I try not to compose political correct speak and I'm pretty slow at decoding political correct speak. But after a little thought I found it quite comical: This meeting's conduct furnishes a cute little story of how we have all become politically correct almost to the point of absurdity.

Upon a little more thought however, I was more than a little insulted: It was clear that I was now viewed and had been so viewed as pirah by the rest of the ownership of Graham Court and was being excluded from meetings because of it.

And then it dawned on me that I could not remember when was the last time I was invited to or was at a board meeting, and that my sole participation in the management of Graham Court -- where I had lived for well over 20 years and in which I had almost a quarter of a million dollars invested -- was now being limited to being invited as a spectator to a two hour meeting once a year.

VI. RECOMMENDATIONS TO THE COMMITTEE

Your stated purpose in calling this hearing is to get meaniful suggestions and ideas from condominium owners (particuarly agrieved ones!) in order to improve and refine existing statutes for the good of all.

In said regard while I hope it proves entertaining and informative to those of you who read it in its entireity, MOST of the above is probably only of marginal interest: This committee is NOT concerned with any single complex's embroglio. But I have included it all in full and final glory nonetheless because I feel that it necessary for a really clear description and really full understanding these kinds of ongoing abuses of owners rights by their homeowners' organizations boards, how those abuses come about, and lastly so that the committee and members of the NC State Legislature can most clearly see why I am making the recommendations below that I am.

WHY I AM HERE:

As speaker number 43 of 44 I had the opportunity to listen to just about eveyone before me and while I wasn't keeping score, my gut feel was that there were at least as many as 6 and possibly as many as 10 owners with the same grievence I have.

In briefest summary that greivance is: As an owner I now find myself being shut out of homeowners' organization meetings -- and more specifically shut out of board meetings and therefore that I am getting less than what I am entitled to by virtue of the dues I pay in that I don't know what decisions are being made nor how my money is being spent on property that I own. If taxation without representation isn't acceptabe in a democracy, then surely taxation without information isn't either.

WHAT MY POSITION IS;

Upon thought I feel that any owner of a unit of any condomunium complex in this state should have the RIGHT of prior notice of ANY MEETING OF ANY KIND that is called by their homeowners association -- especially board meetings, NOT just the yearly owner's meetings, and that this right should be explicitly stated in staute. Furhtermore I feel that homeowners boards at meetings OTHER than the required annual general owners' meeting should be enpowered to enjoin owners at large from speaking if they see fit.

WHAT MY RECOMMENDATIONS TO THE COMMITTEE ARE:

While I have had time only for the most cursory review of Chapter 47C of NC General Statutes after the committe hearing and before this writing this document I found even that limited time most useful in helping me formulate clearly what changes in statute I'd like to see.

On my review of chapter 47C of NC general statutes it appears that owners are allowed the only the right to attend and be heard at annual general owners meetings: There is no mention of whatever of any right of owners to attend board meetings. This is as it should be IF this committee disagrees with this suggested change and wishes to keep the statutes as they are now. Becauase: If owners are allowed the right to be heard (meaning speak) at board meetings then a board meeting becomes virtually identical to the yearly owners meeting and the reason to distinguish between the two kinds of meetings in statute ceases to exist.

But: I do NOT want this section of chapter 47C to remain as is. I feel very strongly that it should be modified to include an explicit statutory gaurantee of the right of owners to notice of and the right to BE PRESENT at board meetings, but NOT the right to be heard (i.e. to speak).

If a non-office holding owner attended a board meeting and saw or heard something really egregious he could in time alert the general ownership (whose addresses are public record with the Registrar of Deeds and better still with the county tax office). If the general ownership felt strongly enough it wouldn't be long before the offending board members were out on a vote of no confidence. Even short of this extreme scenario an affirmative requirement of statute that board members give general owners notice and the right to BE PRESENT at board meetings and not meet behind closed

doors can only result in a better informed general ownership for the complex in question, which can ony be good for everyone.

How could owners and board members be made to follow such a requirements? i.e. to ensure that boards really did give owners notice of their meetings and that owners at large (particularly the ones board members find obnoxious!) keep their mouths shut and are not disruptive?

ANSWER: I note that NC GS 47C-4-117 says that anyone subject to chapter 47C can be hauled into court and that the Court is empowered to order the losing party in the action to pay reasonable attorney's fees. Given that petitioning the Court proved necessary and the Court in turn issued an Order, and further given that the cost for the appearance of an attorney in Court is now between $500 and $1,000, and further given that condominium boards must hire an attorney and cannot have one of their number act for them (only individual owners can act Pro See), each party, be it the board or a disgruntled owner, distasteful as it might be, would first try and negiotate with the other party rather go to Court, i.e. this would ensure that boards would not meet behind closed doors excluding undersirable (to them) owners, and that "undesirable" owners who otherwise couldn't keep their mouths shut at board meetings would if they knew it entailed an effective $500 to $1,000 fine to pay forthe attorney the board had to hire in order to haul them into Court.

The current abuses by homeowners association boards of dissenting owners in excluding them from meetings by simply not giving them notice and thereby excluding them from meetings in my view stems from a large and (to me) very disturbing national trend: For whatever reason we are ALL drowning in poitical correctness. Nobody seems to be able to say anything bad about anybody these days, and free speech has taken on a new and narrower meaning than in years previous, namely that "you are free to speak as long as you agree with us."

But: "Being critized is what politics is about" -- Harry S. Truman

And furthermore: "Hell. If people don't say what they think I don't see how you expect the democratic system of government to work at all" -- Harry S. Truman

Respectfully submitted before the committee this 8th day of February 2010.

Wm. F. Hargrove Jr.
Owner, A2 Graham Court
233 McCauley Street
Chapel Hill, NC

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
[redacted]: Tuesday, February 02, 2010 11:42 AM
Jayne Nelson (Rep. McGee)
Subject: FW: Meeting in regard to HOA's Feb. s,2010

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: rs189786@aol.com [mailto:rs189786@aol.com]
Sent: Tuesday, February 02, 2010 11:35 AM
To: Susan Doty (Rep. Weiss)
Subject: Fwd: Meeting in regard to HOA's Feb. s,2010

-----Original Message-----
From: rs189786@aol.com
To: JaneNelsonLa@ncleg.net
Sent: Thu, Jan 28, 2010 4:26 pm
Subject: Meeting in regard to HOA's Feb. s,2010

[redacted]d like to briefly speak in regard to the following:

A. Who has the enforcement authority in relation to G.S. NC 47-F
B. Who enforces the rules for G.S. NC 55-A
C. Does N.C. 47-F have final ruling or do charters supersede the law
D. At what point does the HOA or POA have control in regard to the developers authority to make decisions
E. One of the POA's that we belong to has started to issue speeding tickets to residents, does not the state require that all fines go to the local schools and does the private security firm have the power to issue tickets
F Why does the Real Estate Commission not regulate all Property Managers that are allowed to spend the lot owners funds, and have some input as to Ethics in regard to operation of business

We at present pay dues to three separate HOA;s and find the operations and rules have little consistence; We have been told that we cannot question to how, or to who monies were spent, that some committies may meet in secret and that they supercede any regulation. How does anyone the answer to these questions without any NC Governmental agency having authority to enforce the statutes as written by the NC legislators.

Respectfully;

Ron Stephens
Farmgate Road
Raleigh, NC 27606
919-851-0565
919-792-7582
910-245-3015

[redacted]

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS February 2, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Keith Long	Chatelaine HOA 603 Beachaven Ln Waxhaw NC 28173
Jim Laughlin	HOA-NC Mocksville 1 Copley Pkwy, Ste 480 NC. 27560
[illegible]	CAMS, Inc. 1630 Military cutoff Rd 28403 Wilm NC ~~28405~~
Elliott Cornett	211 Main St Pineville NC 28134
Randy Fann	Association Management Group 211 Main St, Pineville NC 28134
Bill Colyer	Bradfield Farms HOA 7214 Maitland Ln Charlotte NC 28215
FRANK WILDMAN	SEA TRAIL - 470 EGRET DR. SUNSET BEACH, NC 28468
DOU DEVITA	
LEISA/KEN El Shahawy	STORRINGTON H.O.A.
Paul Mongert	Association Management Group 614 W. Friendly Greensboro, NC 27401
Royi Joan Coles	Arrowhead Beach HOA EDENTON, NC.

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS February 2, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. Gam Clifton	Personal Interest
BOB CAVINESS	HOA President
Wilma Sayers	" Past Pres
ROBB BAER	CAI NC CHAPTER
JOHN LAWTON	CAI NC CHAPTER
MARIE GRAY	HOA MANAGER
ALIX PORTO	HOA MANAGER
F. Winston Penley	HOA member.
Sarah Gilbert	HOA Treasure

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS February 2, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Slaughter	Forman Rossabi Black, P.A. Greensboro
Spencer D Ferguson	Association Management Group Asheville
Gina Brooks	Raleigh, NC
Diane Starling	PO Box 2947 Ral. NC 27602
Kelly St. Clair	Highland Creek Community Assoc. c/o Hawthorne Management Charlotte, NC
Virginia Cross	Shallow Bag Bay Club Owners Association c/o Virginia Cross 2224 Futrell Robson Rd, Bethel, NC 27812
Katrell in Montague	Resident - Battle Ridge 546-Dev 4205 Bayberry Lumberton, Rd. 27610 KAMontague1@aol.com
R. W Stephens	5920 Falmgate Rd. Ral. N.C. 27606
Edward Cornet	Ocean Hill I POA Corolla, NC
Tim Sellers	Sellers, Hinshaw Attorneys Charlotte
Roy Roebuck	Home owner Winston-Salem NC

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS February 2, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian VanLandingham	homeowner 2621 Sterling Ridge Pt. Drive
Russell Leach	Home Owner 1501 Lundenberg Square, Wake Forest NC 27587
John Bowdich	LML HOA
Julie Cama	Regency HOA Board member
RICHARD J RODDY	REGENCY - CAMBRIDGE-WYNDFALL HOA BOARD, CARY, NC
John T. Quinn	MAYOR TOWN OF INDIAN TRAIL, NC 3315 CREEK TRAIL Rd, INDIAN TRAIL, NC.
RE Powell	AOC
HERBIE HARTSFIELD	
Johnny Cameron	ASSOC. Mgr, Crystal Coast Mgmt Consultants Emerald Isle NC
PIERRE GIANI	
GORDON CORLEW	ST. JAMES PLANTATION POA

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS February 2, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LARRIE LOEHR	10716 Collingsworth CT 27614
JOHN SHAW	CARY
Ruth Merkle	CARY

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

2009-2010

Volume 2

REPRESENTATIVE WILLIAM C. McGEE
CO-CHAIR

REPRESENTATIVE JENNIFER WEISS
CO-CHAIR

Susan Doty (Rep. Weiss)

From: Jayne Nelson (Rep. McGee)
Sent: Friday, February 05, 2010 3:00 PM
Subject: House Select Committee on Homeowners Associations Meeting 2-16-10

February 5, 2010

MEMORANDUM

TO: Members, House Select Committee on Homeowners Associations

FROM: Representative William C. McGee, Co-Chair
Representative Jennifer Weiss, Co-Chair

SUBJECT: House Select Committee on Homeowners Associations

There will be a meeting of the House Select Committee on Homeowners Associations:

DAY: Tuesday TIME: 10:00 am

DATE: February 16, 2010

LOCATION: Legislative Office Building, Room 421

Please advise Jayne Nelson, Committee Assistant, at 919-733-5747, or e-mail mcgeela@ncleg.net, or Susan Doty at 919-715-3010 or weissla@ncleg.net if you will be unable to attend.

Posted:

cc: Committee Record _____
Interested Parties _____

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

MINUTES
FEBRUARY 16, 2010

Representative Jennifer Weiss, Co-Chairman, called the meeting of the House Select Committee on Homeowners Associations to order at 10:00 a.m. Members present at the meeting were Co-Chairman William McGee, Representatives George Cleveland, Beverly Earle, Chris Heagarty, Julia Howard and Michael Wray. Also present were staff members Karen Cochrane-Brown, Jennifer McGinnis, Bill Patterson, Martha Walston, Joe Moore and committee assistants Susan Doty and Jayne Nelson. Chairman Weiss thanked the Sergeants-at-Arms (See Attachment #1, Sergeants At Arms Register) and welcomed members, staff and visitors. (See Attachment #2, Visitor Registration) Chairman Weiss recognized Representative Frank Iler, Brunswick County, and welcomed him to the meeting. She reported the Public Hearing, held by the committee on February 2nd, was well attended. Approximately 40 people spoke at the Public Hearing and committee members continue to hear from homeowners.

Chairman Weiss introduced the first speaker, Mr. Bob Leker, Renewable Program Manager, State Energy Office, North Carolina Department of Commerce. Mr. Leker, who spoke on issues related to solar access law, has been in his current position since 1999 and was with the Energy Division in the mid-1980's. He said there has been an increased interest in solar access that is driven from financial incentives and from sustainability interests. He has seen issues from an installer perspective, solar installer perspective, homeowner perspective and from the perspective of homeowner associations. In speaking, Mr. Leker referred to the solar access law, Senate Bill 670, Session Law 2007-279, AN ACT TO PROVIDE THAT CITY ORDINANCES, COUNTY ORDINANCES AND DEED RESTRICTIONS, COVENANTS, AND OTHER SIMILAR AGREEMENTS CANNOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING THE INSTALLATION OF SOLAR COLLECTORS NOT FACING PUBLIC ACCESS OR COMMON AREAS ON DETACHED SINGLE-FAMILY RESIDENCES (See Attachment #3). The intent in the law is that there is no prohibition for collectors, but there are some sections in this access law that are problematic based on comments received from homeowners and homeowner associations who are uncertain about the interpretation of this access law. Mr. Leker read the restrictions stated in the bill (see attached copy of bill, page 1, Section 1, 160A-201, subsection (a), and (c) which lists restrictions and which, Mr. Leker said, seem to be the problem. Essentially, if one is facing a house from a sidewalk or street, and the solar collector(s) can be seen, the wording in the bill seems to say the exceptions to the prohibitions can be prohibited. Comments he has received from homeowners, builders, and homeowner associations are that they are not sure what the wording means and, specifically, if a portion of the collector can be seen does that mean it's visible. A common thread seems to be no reasonable sighting of collectors, but he has not seen a definition of what constitutes "visible". This is an area that homeowners and homeowner associations are uncertain about and about which the associations have asked for guidance and help.

Rep. McGee asked if there are other restrictions on solar energy panels other than those imposed by HOAs. Mr. Leker responded no. Chair Weiss added that the bill says they can't be restricted , the subsection basically prohibits any visible solar part. Representative McGee replied that the law doesn't prohibit the HOA from enacting restrictions against homeowners. Ms. Walston said there was legislation last session that would invalidate any new restrictive covenants created after December 1, 2009 prohibiting the installation of a solar panel. There can still be restrictions about it being open to common areas, but there can't be any restrictive covenants after December 1, 2009 that would restrict installation subject to those conditions. The question was asked if that restricts any covenant passed prior to any existing houses being retro-fitted, can they still be restricted? Ms. Walston answered that the bill passed last session does not apply to any existing covenants/restrictions in 2007. Chairman Weiss asked if existing HOAs have covenants prohibiting solar panels, how can homeowners in those HOAs make changes in their covenants, or can they change the covenants to allow solar panels? Ms. Cochrane-Brown responded 67% of Homeowners have to agree to an amendment of the declaration. In response to a question by Rep. Cleveland, Ms. Walston said that the bill that passed last session is HB1387, SL 2009-553 (See Attachment #4). Chairman Weiss asked that a copy of each of the laws be made available today so committee members could refer to them. Ms. Walston said the 2009 legislation basically pointed out that the law that passed in 2007 applied to areas that were predominately for residences, so it would include HOAs but it does not apply to multi-story stacked condominiums; it excluded them from the 2007 legislation. In response to a question from Chairman Weiss, Ms. Walston said it means that solar panels can be prohibited. Mr. Leker said most of the issues that he is aware of have been covered; it revolves around the visibility exceptions that allow restrictions to be put into play. He added that the current designs for solar collectors are very sleek and look essentially the same as skylights with there being little difference in appearance. With the interest in this and other states regarding sustainability, people are primarily interested in placing collectors on their roofs and, in rare cases, on the ground. Many examples of legislation around the country and of state incentives for renewable energy can be seen on the Internet at www.dsireusa.org. In response to a question about placement of panels on the roof, Mr. Leker said there are examples from another states with laws that are more permissive about allowing solar panels: he said he would provide that information to the committee. Chairman Weiss said it would be helpful to talk about sustainability issues. Mr. Leker replied there are federal and state tax credits in place; in NC we are running behind the nation in per capita energy use; the residential building area is a very significant area in terms of energy use and it is easy for buildings to be designed to incorporate solar design from the beginning of construction. A passive solar design can easily save 40-50% of the heating needs of the building and solar water heating can easily count for 60-80% of the hot water needs in incorporating hot water collector systems. In NC we have very good access to the sun energy availability, which has been recognized for decades and which is why the Solar House was designed and built. He said there is a need and opportunity that could be facilitated with policies that give people the incentive to place appropriately designed

solar collector systems on their residences, thereby dramatically reducing the energy footprint of a residence. These systems can also be retro-fitted to south facing roofs. Chairman Weiss asked if an individual who put solar panels on his home potentially qualify for Federal tax credits. Mr. Leker answered yes, 30% for federal tax credit and 35% for state tax credit, plus a reduction in the energy costs and the demand for fossil fuel. He also said there are local companies that are interested in getting into this market; there are emerging solar certification laws, and national boards of certified energy practitioners. In NC we are poised to make a leap forward to provide solar access and to institute solar technology in a range of buildings. Chairman Weiss asked Mr. Leker about recent legislation concerning green power and if utilities are availing themselves of this technology. In response, Mr. Leker said Senate Bill 3, which passed two years ago, required utilities to institute more renewable energy as part of their portfolio of 12 ½% by 2021 as energy sales; the requirement of renewable energy is 7 ½% and 5% from energy conservation. In closing, Mr. Leker said the effectiveness of the programs are shown by both investor owned and co-op utilities coming forward with their own programs; the website previously mentioned has a listing of utility programs now available for individuals as well as companies to incorporate renewables. Chairman Weiss thanked Mr. Leker for the information he provided to the committee.

In response to a question from Rep. McGee, Ms. Cochrane-Brown of the Research Division Staff cited the new Article 3, Section 22 b-20, subsection (b) which basically provides that a HOA cannot impose a deed restriction or covenant that essentially prohibits someone from installing solar energy provision, however, the effective date falls on page 3, Section 4, and says the act becomes effective Oct. 1, 2007 and that Section 3 applies to deed restrictions, covenants or similar agreements on that land recorded on or after that date. Basically, she said, if you create a new association and deed restrictions and you record it after 2007, you cannot include the prohibition. The restrictions that were included before that date are still required and are also subject to restrictions contained in subsection (d); the restrictions of where solar panels can be placed and how visible they can be from certain vantage points. Chairman Weiss said she heard Mr. Leker say that even with the law, after 2007 and with the changes made, the restrictions are so broadly written that it's unclear to what extent a homeowner who lives in a community with a homeowners association can actually have solar panels. She stated it would be helpful for the staff to work with the State Energy Office to find reasonable restrictions and at the same time meaningful language that doesn't completely prohibit this.

Chairman Weiss introduced Mr. Peter E. Powell, Legal Counsel, North Carolina Administrative Office of the Courts. Mr. Powell read a paper written to the committee on issues related to foreclosure on homeowner association liens. (See Attachment #5, Comments to The House Select Committee on Homeowners Associations.) There were no questions from the committee after Mr. Powell's presentation.

The next speaker, Mr. Phil Telfer, Special Deputy Attorney General, Consumer Protection Division, Department of Justice, was introduced by Chairman Weiss. Mr. Telfer spoke to the committee on the number and nature of complaints received from homeowners by the Consumer Protection Division and the type of advice and suggestions that can be given to consumers. The two types of complaints received from throughout the state are 1.) written, for which a file is made, and 2.) a high volume of telephone calls. Regarding written homeowner complaints in the last three full years, he said the number of complaint letters received from homeowners in 2007 were 25 out of a total of 14,516 letters received by the division; in 2008 there were 33 out of a total of 14,768 for the year and in 2009 there were 38 complaint letters out of 18,442 received for the year. He said telephone complaints were a little higher with approximately 100 calls regarding issues with HOAs (in addition to the written complaints) throughout the state per year. Specific records are not kept about telephone calls. Categories fall into 3 areas of complaints: services provided by HOAs, fees charged by HOAs and billing practices of HOAs (assessment, record keeping, mishandling of fees); another large area is foreclosure. Regarding the nature of the complaints received, he said there is not a trend of one bad association receiving a lot of complaints. From the written records, the complaints come from across the state and tend to be for a variety of HOAs. Generally, issues are private legal matters and the Consumer Protection Division tries to advise that the issues are local issues within the community, that the provisions within the HOA bylaws control how changes can be made, and in many ways they are contractual issues to be dealt with within the association. Complaints that are criminal in nature are treated as any others; people are advised to go to local law enforcement. If complaints are about the powers of the association, complainants are referred to their legislators. Mr. Telfer said much of their effort is devoted to education prior to purchasing. A website providing information is available for the public, and consumers are encouraged to talk with current homeowners in the neighborhood prior to purchase. Rep. Wray said, in his experience, most people don't follow those guidelines but just sign the contract to purchase. Chairman Weiss asked, from a legal perspective, where the requirements can be found. Ms. Walston responded that prospective buyers can ask the real estate agent for a copy of the declaration. In response to Rep. McGee's question, Mr. Telfer said that generally the by-laws and declarations would have procedures for an appeal process and that the Consumer Protection Division tries to be sure the appeal process is understood and they advise the homeowner how to proceed. Further, if there are a large number of neighbors with the same complaint, they are referred to the procedures in the declaration and by-laws for replacing members of the homeowner board. Rep. Cleveland said that some homeowners, when they complain to the Consumer Protection Division that their homeowner association broke the law, are told they (the homeowner) should hire a lawyer and take the association to court; he feels that the state should have a way to protect the homeowner. Mr. Telfer referred back to the number of complaints received each year reflecting violations of the law; cases that affect large numbers of consumers are selected from the Attorney General's perspective and, if litigation is brought, it is brought on behalf of the State of North Carolina. Mr. Telfer stated they cannot act as an

individual attorney to each individual and that is why, especially in foreclosure situations, callers are immediately referred to an attorney. Of complaints received, he said there hasn't been one particular management company working across the state affecting broad bands of people. If a complaint is a serious one in the sense of criminal allegations, callers are referred to local authorities. Rep. Heagarty asked if there were any policy recommendations that the state needs to adopt, or is it not thought to be a serious problem. Mr. Telfer replied he would not say the problem is not serious because, if you are the homeowner in that situation, it is a serious problem to you. He said his office has not looked at recommendations or policy changes, but would be glad to work with the committee on issues.

Chairman Weiss recognized Representative Langdon as being in attendance. She then recognized Representative Cleveland who said he felt that if, upon receiving a complaint about a homeowner association, the Attorney General's office would write a letter to the homeowner association stating what the association is doing is wrong a number of problems would be solved. Mr. Telfer said he would take that suggestion back to the Department.

In regard to what must be disclosed, Ms. Walston said the disclosure act states that when residential property is purchased the owner can say that he/she is not disclosing anything; if the owner does disclose, he is required under The Residential Properties Disclosure Act to disclose restrictive covenants at the time of the offer to purchase. To clarify, Chairman Weiss asked if, when a person is selling and the box saying "no disclosures" is checked, it would indicate more the condition of the house rather than any covenants. The law says that the owner can state he is making no representations as to the characteristics and conditions of the real property, or any improvements to the real property except as provided in the contract. She said she is not sure if "characteristics" would include restrictions. Mr. Telfer said the standard disclosure form issued by the Real Estate Commission looks at where restrictive covenants fall. As more and more North Carolina communities have homeowners associations, Chairman Weiss said she feels this is an area that needs more attention. She thanked Mr. Telfer for taking the time to attend the meeting and for answering questions from the committee.

Chairman Weiss asked if there were comments from the members. Representative Earle said she would like more information that would relate to a problem from a constituent regarding his purchase contract which said the property could be used for rental; the board and property management group of his homeowner association recently passed an amendment restricting the number of rentals in the community. The constituent's concerns are about the changes in the lease agreement that originally enabled him to rent his property and now has the possibility of excluding him from renting. Chairman Weiss suggested Representative Earle share the constituent's email with staff for research.

Chairman Weiss stated that at the next meeting, to be held March 4th, the committee will be hearing about homeowner associations from the HOA perspective and from the perspective of the homeowner. At the following meeting, the committee will hear about model legislation from a national perspective.

Representative Howard requested a short summary on the current North Carolina statute.

Chairman Weiss announced that the next meetings are on March 4th and March 31st.

There being no further questions, the meeting was adjourned at 11:05 a.m.

Chairman Jennifer Weiss

Susan Doty, Committee Clerk

Attachment #1	Sergeants-At-Arms
Attachment #2	Visitor Registration
Attachment #3	Senate Bill 670, SL 2007-279
Attachment #4	House Bill 1387, SL 2009-553
Attachment #5	Comments to the House Select Committee on Homeowner Associations

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

AGENDA

February 16, 2010
10:00 a.m.
Room 421 LOB

I. Introduction

Representative Jennifer Weiss, Co-Chair
Representative William McGee, Co-Chair

II. Issues Related to Solar Access Law

Bob Leker, Renewables Program Manager, State Energy Office, Dept. of Commerce

III. Issues Related to Foreclosure on Homeowners Association Liens

Peter E. Powell, Legal Counsel, NC Administrative Office of the Courts

IV. Handling of Homeowner Association Complaints by the Department of Justice, Consumer Protection Division

Phil Telfer, Special Deputy Attorney General, Consumer Protection Division, Dept. of Justice

V. Committee Discussion

VI. Adjourn

Attachment #1

Rep Frank Iler Brunswick

HOUSE PAGES

NAME OF COMMITTEE House Sel Comm. Homeowners Assoc DATE 2/16/10

1. Name: _____

   County: _____

   Sponsor: _____

2. Name: _____

   County: _____

   Sponsor: _____

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

SGT-AT-ARM

1. Name: Ken Burroughs
2. Name: Young Bay
3. Name: Bob Rossi
4. Name: _____

Attachment #2

VISITOR REGISTRATION SHEET

House Select Committee - Homeowners Assoc 2/16/10
Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sherry Emanuel	Solar Air Systems Cary, NC
Paul Alexander	Solar Air Systems Cary N.C.
Frank Wiedman	Homeowner, Brunswick ~~Co~~, N.C. fwiedman@atmc.net
Tara Stubbins	CAI-NC, Exec Director CAI_saferCash.c
John Lanton	Community Associations Institute - Legislative Action Committee
Janet Thoren	North Carolina Real Estate Commission
Jennifer Mooney	LandArc Prty Mgmt - 115 Allforth, Cary 27519
Hope Carmichael	Attorney - Raleigh
Henry Jones	Attorney Raleigh
Bob Leker	State Energy Office 733-1907 bleker@nccommerce.com
AL Ripley	NC Justice Ctr

VISITOR REGISTRATION SHEET

House Select Committee – Homebuilders Assoc. — 2/16/10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BLAIR WILLIAMS	Wake County Superior Clerk of Courts office
[signature]	AOC
Paul Meagert	Association Mgmt Group, Inc.
Harriet Worley	NCDOT
Phil Telfer	"
[signature]	"
[signature]	Attorney, Forman Rossabi Black, PA
Cody Thomas	NCAR
DIANA STARLING	CITIZEN [redacted] RALEIGH
Dan Crawford	CCNC
Rita Harris	NC Commerce

VISITOR REGISTRATION SHEET

House Select Comm. Homeowners Assoc. — 2/16/10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders Assoc.
Jessi Hays	NC Home Builders Assoc.

Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-279
SENATE BILL 670

AN ACT TO PROVIDE THAT CITY ORDINANCES, COUNTY ORDINANCES, AND DEED RESTRICTIONS, COVENANTS, AND OTHER SIMILAR AGREEMENTS CANNOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING THE INSTALLATION OF SOLAR COLLECTORS NOT FACING PUBLIC ACCESS OR COMMON AREAS ON DETACHED SINGLE-FAMILY RESIDENCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-201. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no city ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence, and no person shall be denied permission by a city to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a detached single-family residence.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-144. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no county ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence. No person shall be denied permission by a county to install a solar collector that gathers solar radiation as a substitute for traditional energy for water

heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a detached single-family residence.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 3. Chapter 22B of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Deed Restrictions, Covenants, and Other Agreements Prohibiting Solar Collectors.

"**§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

(a) The intent of the General Assembly is to protect the public health, safety, and welfare by encouraging the development and use of solar resources and by prohibiting deed restrictions, covenants, and other similar agreements that could have the ultimate effect of driving the costs of owning and maintaining a residence beyond the financial means of most owners.

(b) Except as provided in subsection (d) of this section, any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence on land subject to the deed restriction, covenant, or agreement is void and unenforceable.

(c) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would regulate the location or screening of solar collectors as described in subsection (b) of this section, provided the deed restriction, covenant, or similar binding agreement does not have the effect of preventing the reasonable use of a solar collector for a detached single-family residence.

(d) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit the location of solar collectors as described in subsection (b) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(e) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 4. This act becomes effective October 1, 2007. Section 3 of this act applies to deed restrictions, covenants, or similar binding agreements that run with the land recorded on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:12 p.m. this 27th day of July, 2007

Attachment #4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-553
HOUSE BILL 1387

AN ACT TO MAKE THE CURRENT LIMITATIONS ON CITY ORDINANCES AND COUNTY ORDINANCES THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY AND THE CURRENT LIMITATIONS ON DEED RESTRICTIONS THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY EXCEPT CERTAIN MULTI-STORY CONDOMINIUMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-201 reads as rewritten:

"**§ 160A-201. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no city ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single-family residence,~~residential property, and no person shall be denied permission by a city to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single-family residence.~~residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a ~~detached single-family residence.~~residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the facade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or

(3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 2. G.S. 153A-144 reads as rewritten:

"**§ 153A-144. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no county ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single-family residence.~~residential property. No person shall be denied permission by a county to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single-family residence.~~residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a ~~detached single-family residence.~~residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the facade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or

(3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 3. G.S. 22B-20 reads as rewritten:

"**§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

(a) The intent of the General Assembly is to protect the public health, safety, and welfare by encouraging the development and use of solar resources and by prohibiting deed restrictions, covenants, and other similar agreements that could have the ultimate effect of driving the costs of owning and maintaining a residence beyond the financial means of most owners.

(b) Except as provided in subsection (d) of this section, any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single-family residence~~residential property on land subject to the deed restriction, covenant, or agreement is void and unenforceable. As used in this section, the term "residential property" means property where the predominant use is for residential purposes. The term "residential property" does not include any condominium created under Chapter 47A or 47C of the General Statutes located in a multi-story building containing units having horizontal boundaries described in the declaration. As used in this section, the term "declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103, depending on the chapter of the General Statutes under which the condominium was created.

(c) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would regulate the location or screening of solar collectors as described in subsection (b) of this section, provided the deed restriction, covenant, or similar binding agreement does not have the effect of preventing the reasonable use of a solar collector for a ~~detached single-family residence.~~residential property. If an owners' association is responsible for exterior maintenance of a structure containing individual residences, a deed restriction, covenant, or similar binding agreement that runs with the land may provide that (i) the title owner of the residence shall be responsible for all damages caused by the installation, existence, or removal of solar collectors; (ii) the title owner of the residence shall hold harmless and indemnify the owners' association for any damages caused by the installation, existence, or removal of solar collectors; and (iii) the owners' association shall not be responsible for maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a written agreement that is recorded in the office of the register of deeds in the county or counties in which the property is situated. As used in this section, "owners' association" has the same meaning as in G.S. 47F-1-103.

(d) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit the location of solar collectors as described in subsection (b) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(e) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 4. G.S. 160A-400.4 reads as rewritten:

"**§ 160A-400.4. Designation of historic districts.**

(a) Any municipal governing board may, as part of a zoning or other ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the Preservation Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district.

(b) No historic district or districts shall be designated under subsection (a) of this section until:

(1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

(2) The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the municipal governing board within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the municipality of any responsibility for awaiting such analysis, and said board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(c) The municipal governing board may also, in its discretion, refer the report and proposed boundaries under subsection (b) of this section to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared by the preservation commission, and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

On receipt of these reports and recommendations, the municipality may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

(d) The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to historic districts, and the authority under G.S. 160A-201(b) for the ordinance to regulate the location or screening of solar collectors may encompass requiring the use of plantings or other measures to ensure that the use of solar collectors is not incongruous with the special character of the district."

SECTION 5. This act becomes effective December 1, 2009. Section 3 of this act applies to deed restrictions, covenants, or similar binding agreements that run with the land and that are recorded on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 10:40 a.m. this 28th day of August, 2009

Attachment #5

NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Legal and Legislative Services Division

Peter E. Powell
Legal and Legislative Administrator

PO Box 2448, Raleigh, NC 27602
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COMMENTS TO THE HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS
February 16, 2010

RESPECTFULLY SUBMITTED BY
PETER E. POWELL, LEGAL COUNSEL
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS

My name is Pete Powell. I serve as Legal Counsel for the North Carolina Administrative Office of the Courts, and I have done so for 20 years. In that capacity I advise and teach court officials on a wide variety of aspects of North Carolina law and procedure, including foreclosures, and I have testified hundreds of times before committees and commissions of the General Assembly. I am a former member of the Real Property Section Council of the North Carolina Bar Association, and I currently serve on the board of directors of the home owners association where I live.

GS 47C-3-116 of the North Carolina Condominium Act and GS 47F-3-116 of the North Carolina Planned Community Act provide for liens on behalf of home owner associations based on assessments for the common expenses of the development community. Unfortunately, there is very little specificity, and huge gaps in the legislation which can create defects in title, questionable procedures, and abuses and overcharges by some of the players. In recent years, the legislature has enacted into law a number of protections for homeowners facing foreclosure of deeds of trust. There are no parallel protections regarding home owner association lien foreclosures.

The statute merely provides that home owner association (HOA) liens may be foreclosed "in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45." This raises many issues. First, mortgages are quite rare if not non-existent is North Carolina. They provide a direct relationship between the lender and the borrower, with legal title being held by the lender. In that situation, a lender is forbidden by law to bid in at the foreclosure sale. In North Carolina, the common practice in real estate secured loans is to use a deed of trust, with title vesting in an independent trustee. In the event of a foreclosure, the lender can then bid in at the sale.

With title being in the trustee, upon the conclusion of the foreclosure proceedings, the trustee of a deed of trust can convey title to a new buyer. In a judicial sale, such as a partition, or a sale to create assets in an estate, the court appoints a commissioner who is invested with authority to conduct a sale and convey title. That person is a court appointed fiduciary, subject to the supervision and control of the court. If they steal the money or fail to account or complete their duties, the court can find them in contempt and put them in jail until they fix it. In HOA liens, there is no trustee, and there is no mechanism in the statute to insure that the party purporting to convey title to a new buyer actually has the power and authority to do so. Accordingly, there are many thousands of questionable titles out there. Furthermore, if the person conducting the sale acts up, there may be no remedy available to the court to correct the situation since neither the court nor the statute appointed this person, invested him or her with title, or made him or her subject to the court's supervision.

The Notice of Hearing is the initial pleading, and it is itself a problem, as there are no guidelines for what should be included in that document, and what notices or information about consequences should be given to the owner. Unlike foreclosures of deeds of trust, the Notice of Hearing is normally filed by an attorney for the association, not an independent trustee. What are the ethical guidelines under which that person should operate, and where is their source of title? Can that attorney collect both an attorney fee and a commission on the sale, both of which are charged back to the home owner? What should be the limits or guidelines on commissions or attorney fees, and who decides? If the home owner pays the assessment, does he have any right to compel cancellation of the lien of record? If the home owner wants to pay off the lien, at what point can he do so, or, more importantly, at what point does he lose the right to do so. Other foreclosure statutes seem to place that point at the end of the upset bid period. However, we have case law dealing with the recovery of insurance proceeds indicating the homeowner retains rights in the property up until the recording of the trustee's deed. What is the better public policy?

We have some suggestions, but on some matters we can only point out problems and leave the solutions or the policy choices to the wisdom of the General Assembly. Firstly, we would suggest enacting legislation enabling and requiring an HOA to appoint, remove and substitute a trustee by recording an instrument in the office of the register of deeds, and authorizing that trustee, upon completion of the foreclosure proceeding, to conduct the sale, convey title, and report to the court. We also suggest defining the declaration creating the HOA as having the same meaning as a security instrument under Chapter 45. That would clarify exactly what information must be set forth in the Notice of Hearing. You might consider specifying that the HOA can bid in at the lien foreclosure sale, and giving the home owner the same rights to force cancellation of the recorded lien after paying off that lien as a home owner would under the Mortgage Satisfaction Act. We might also suggest specifying exactly when the right to redeem the property expires, perhaps up until the recording of the trustee's deed, and providing a curative statute for sales conducted and deeds signed by the home owner association or their attorneys in the past.

The Commission likely will need to look at the attorney fee/commission situation. It has often been suggested that any fix to this procedural nightmare ban attorney fees, if they constitute a separate and additional charge to any commission. Currently, the statute provides for a cap of $1,200 on attorney fees in an HOA foreclosure, if the proceeding is uncontested. What that means is that all unopposed cases end up charging $1,200. There is no mention in the statute of commissions and no guidelines for the allowance of attorney fees, although there are varying percentages allowed if there is a payoff at different stages, but there is no definition of what amount that percentage is figured against.

I have seen proposals to establish a minimum fee, which some people liken to a lawyers relief act. I have seen proposals for a maximum fee, which may result in the General Assembly having to revisit this arena every few years, or to provide a mechanism for adjustment. Frankly, there is little difference between the amount of work needed to prepare the pleadings and conduct a foreclosure on a million dollar condominium and a ten thousand dollar time share. Accordingly we would not suggest a commission based on the value of the property or the amount of the assessment lien. We have seen proposals suggesting that the court establish the compensation in each case applying the standards for fiduciary compensation set forth in GS 32-54. Obviously, that requires additional court proceedings and may drive up the cost. Whatever standard the General Assembly decides to invoke will improve the current unregulated situation.

As always, we deeply appreciate the opportunity to comment on matters being considered by the General Assembly. Thank you for your attention, and I will be happy to answer any questions.

February 24, 2010

MEMORANDUM

TO: Members, House Select Committee on Homeowners Associations

FROM: Representative Jennifer Weiss, Co-Chair
Representative William C. McGee, Co-Chair

SUBJECT: House Select Committee on Homeowners Associations Meeting

There will be a meeting of the House Select Committee on Homeowners Associations:

DAY:	Thursday	TIME:	1:00 pm
DATE:	March 4, 2010		
LOCATION:	Legislative Office Building, Room 421		

Please advise Jayne Nelson, Committee Assistant, at 919-733-5747, or e-mail mcgeela@ncleg.net if you will be unable to attend.

Posted:

cc: Committee Record _____
Interested Parties _____

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

AGENDA

March 4, 2010
1:00 p.m.
Room 421 LOB

I. Introduction

Representative William McGee, Co-Chair
Representative Jennifer Weiss, Co-Chair

II. Remarks on behalf of the Real Estate Commission

Miriam Baer, Legal Counsel & Asst. Dir., Legal Services Division, NC Real Estate Commission

III. Remarks from a Representative of the Community Associations Institute

Robb Baer, President, NC Chapter, Community Associations Institute

IV. Remarks on Behalf of Homeowners

Al Ripley, Director, Consumer Action Network, NC Justice Center

V. Committee Discussion

VI. Adjourn

House Select Committee on Homeowners Associations Meeting

March 4, 2010
1:00 pm

The House Select Committee on Homeowners Associations met on Thursday March 4, 2010 at 1:00 pm in the Legislative Office Building in room 421 to hold a meeting on issues concerning homeowners associations. The following members were present: Co-chairman McGee (presiding), Co-chairman Weiss, Representatives Howard, Cleveland, Heagarty and Wray. For visitors in attendance see the attached Visitor Attendance Sheet.

Representative McGee called the meeting to order. Introductions were made and he thanked the staff and legislative assistants for working hard to get the meeting together in a timely fashion. He also reported that he had many contacts from people across the State concerning homeowners' association issues and after discussing the issues with them, he referred them to the members that represent them so all of the members will be aware of the issues surrounding homeowners associations.

Representative McGee then introduced the first speaker, Miriam Baer, Legal Counsel and Assistant Director of the Legal Services Division with the North Carolina Real Estate Commission who brought the committee information regarding citizen inquiries and complaints concerning homeowners associations, the Commission's jurisdiction in responding to complaints and the real estate broker's duties in disclosing the existence of homeowners associations and covenants to the consumer. (see attachment 1).

Representative Heagarty asked if it is a burden to get the covenants. Ms. Baer responded that many times it is not, but if the management does not have them, a title search may be necessary.

Representative McGee asked if some brokers are not fully explaining the covenants of the property the consumers are buying. Ms. Baer answered that some covenants are very detailed and most brokers do not have the training to decipher them, do a title search or go to the public records to find them and in some instances one developer may have put covenants on a property and either sells the subdivision or goes bankrupt and the new developer may put new covenants on the new lots without changing the pre-existing homes' covenants. Ms. Baer also said that this is a complex area that not all people with broker licenses can handle.

Representative Weiss asked when the consumer finds out during the sale what the restrictive covenants are. Ms. Baer responded that the brokers are instructed

to make the buyer aware of the restrictions on use of the property and if they have questions, to get legal advice. She also stated that developers have their own forms and lawyers and the Commission does not require them to have a standard form.

Representative Cleveland remarked that wouldn't the buyer find out about the covenants from the lawyer at closing. Ms. Baer answered that it is a timing issue, that most buyers would have already signed a contract. Representative Cleveland asked about losing one's earnest money if they walk away. Ms. Baer said that the parties involved or the courts would decide.

Representative Howard asked about the Commission's Advisory Task Force and what recommendations were made. Ms. Baer said the recommendations are: (1) create a state agency (2) a community association board (3) a community association registry and fee (4) community management licensing (5) pre-licensing education (6) standard of conduct emphasizing money handling and finance and (7) a bonding requirement.

Representative Heagarty asked if the covenants are on file at the Register of Deeds. Ms. Baer said they are.

Representative Howard questioned the need for an agency. Ms. Baer said that it helps to have someone sign on to the idea of the need for laws and to understand them.

Representative Howard asked if a code of ethics would be appropriate and an easier route to take instead of a state agency. Ms. Baer responded that the Commission's committee's opinion was that it would be more efficiently handled in an agency.

Representative McGee thanked Ms. Baer for her presentation and recognized Representative Iler who was sitting in on the meeting.

Mr. Robb Baer, President of the Community Associations Institute was the next to speak regarding Community Management Companies and gave a power point presentation about manager licensing (see attachments 2, 3 and 4).

Representative McGee thanked Mr. Baer and did say that the two speakers are not related.

Representative McGee introduced Mr. Al Ripley from the North Carolina Justice Center to present their recommendations for the protection of homeowners from abusive practices used by homeowner associations (see attachment 5). He gave

actual case studies and explained how their organization put these recommendations together.

Representative McGee thanked Mr. Ripley. No questions were asked and Representative Weiss asked for Representative Earle's letter from a constituent to be added to the record (see attachment 6).

Representative Howard asked staff for the summary of statutes that pertain to homeowners associations, and Representative McGee asked the staff to prepare a concise version for the members. Martha Walston of staff replied that she would provide that for the committee.

Representative McGee thanked the presenters and staff and adjourned the meeting at 2:10 pm.

Representative William C. McGee,
Co-Chair

Jayne A. Nelson,
Legislative Assistant

3-4-10 ATT # 1

Good afternoon.

My name is Miriam Baer, and I am Legal Counsel to the North Carolina Real Estate Commission. The Commission is the licensing board for real estate brokers.

It is my understanding that you have asked for information from the Commission about citizen inquiries and complaints concerning homeowner associations ("HOAs"), the Commission's jurisdiction in responding to those complaints and the real estate broker's duties with regard to disclosing to consumers the existence of HOAs and restrictive covenants.

Inquiries and Complaints

The Commission regularly receives calls and written complaints from homeowners and even tenants concerning the management and operation of HOAs. Some of the concerns are more mundane – concerns about who gets to use what parking space, whether the covenants allow a house to be painted a particular color, whether an owner can park his RV in the driveway. Others are far more serious, and relate to the management of the HOA, the right of the individual HOA members to review its records, and the propriety of the HOA's handling of the consumer's dues.

From time to time, we receive significant complaints where it appears that a professional manager or a HOA volunteer-manager has misused large sums of the Association's money. These are the most troubling.

Commission's Jurisdiction

As to the complaints, inquiries and concerns reported to the Real Estate Commission, the Commission's jurisdiction is limited. The Commission licenses and regulates real estate brokers – persons whose job it is to assist buyers and sellers with their residential and commercial sales transactions, and persons who manage rental properties for the owners.

No real estate license is required in order to manage HOAs. As a result, the Real Estate Commission rarely has jurisdiction to intervene. The only time the Commission can intervene is when the person who is managing the Association happens to have a real estate broker license. And, of course, no other board or commission oversees the conduct of HOAs or their managers, so we do not have any place to send consumers with complaints about their HOA except to a private attorney.

Because of concerns about the number and kinds of complaints we receive, and the lack of a regulatory body to assure consumer protection in connection with the large sums of money held by HOAs's, the Commission convened a *Community Association Management Advisory Committee* which met in 2005 and 2006. Out of that committee came a number of recommendation, primarily, that the Commission support legislation to:

1. Create a state govt agency consisting primarily of community association managers to administer a state licensing program, and give the agency the authority to investigate consumer complaints concerning misconduct by an association manager and to discipline managers;

2. Require all but the smallest community associations to register with the state govt agency and pay a nominal registration fee;

3. Require community association managers to obtain a license from a state govt agency that would impose:
   a. Pre-license educational requirements
   b. A mandatory standard of conduct
   c. A license application and renewal fee;

4. Require bonds of persons/entities responsible for handling and accounting for funds;

The Commission, at its November 2006 meeting, approved these recommendations in concept.

Real Estate Agent's Duty - Managing a Homewoner Association

If in a particular case it turns out that the HOA manager has a real estate license, the Real Estate Commission's rules then obtain. They provide as to real estate licensee/HOA managers that:

> (l) **The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule.** Such funds must be deposited into and maintained in a trust or escrow account dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but in no event shall the statements be made less frequently than every 90 days.
>
> (j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

So, if the Commission receives a complaint against an HOA manager, and that manager happens to have a real estate broker license, then we will open a file and make an inquiry to assure that the licensee followed the law and rules. We will not open a file as to non-broker managers, however, because we have no jurisdiction or authority to do so, or to institute proceedings against them.

Real Estate Agent's Duty - Disclosure of Covenants

I understand that the Committee is interested in learning about a real estate broker's duty to disclose to consumer's the existence of a HOA and restrictive covenants, and the broker's duty to provide HOA documents and the covenants to prospective purchasers.

The Commission does not require licensees to provide consumers with a copy of the restrictive covenants. Our concerns about having a real estate broker do it are many: (1) to get a current version of the covenants, the broker would need to conduct a title search, something he or she is not qualified to do; (2) There are often multiple sets of covenants for particular developments - e.g. a master set for an entire subdivision, plus individual sets for individual phases. There may have been multiple developers before one subdivision is complete, with different covenants applicable to different lots.

Real estate brokers receive only limited hours of training before they are eligible for licensing. The filing of restrictive covenants is far more complex than their training covers.

However, this does not mean that brokers are without responsibility. Agents are required to disclose to a buyer when they know, or reasonably should know, that a property is subject to restrictive covenants. Likewise, if the broker is aware that a buyer has a particular use in mind for the property that may conflict with the covenants, e.g. running a business out of the home, the broker must alert the consumer to the issue. As I said, we do not expect the broker to search the title, but we do expect the broker to alert the consumer to the issues raised by covenants and to refer them to an attorney for assistance. Further, if the broker undertakes to assure the consumer what the covenants are, we expect the broker to be right.

Because we receive lots of calls and inquiries concerning HOAs and Restrictive Covenants, we have developed Q&A brochures that address the most common issues.

- Residential Subdivisions and Planned Communities - deals with HOAs, RC's, roads and common areas;
- Real Estate Closings - addresses more briefly what is a homeowner association
- Condos and Townhouses - address HOAs and dues in the context of condominium ownership.

We appreciate the Committee's interest in the issues surrounding homeowner associations.

3-4-10 AH. 2

NORTH CAROLINA CHAPTER
community
ASSOCIATIONS INSTITUTE



To: **House Select Committee on Homeowners Associations**

March 4, 2010

From: **Robb Baer, CMCA, AMS, PCAM**

President – NC Chapter of CAI

828-650-6852

rbaer@ipm-corp.com

Chairperson Weiss, Chairperson McGee and members of the committee, thank you for the opportunity to speak with you today. I am Robb Baer and since 1998 I have owned and operated a Professional Community Management Company in Asheville NC managing over 80 communities through out Western North Carolina. I have earned the highest designation bestowed by the Community Association Institute (CAI) to a community manager the Professional Community Association Manager (PCAM). I currently serve as the president of the North Carolina Chapter of CAI and also serving as a CAI National Faculty Instructor.

Community Associations Institute (CAI) is a national organization dedicated to fostering vibrant, competent, harmonious community associations. For more than 30 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. Our members include community association volunteer leaders, professional managers, community management firms and other professionals and companies that provide products and services to associations.

Working closely with the state and regional chapters, CAI brings together experts to provide the latest information on community association management and governance to the volunteer boards throughout the nation. We serve our members with books, seminars and workshops, research, continuing education and periodicals, including *Common Ground* magazine and specialized newsletters on community association management, governance and law.

CAI also advocates for legislative and regulatory policies that support responsible governance and effective management. We represent the interests of our members

before the U.S. Congress, federal agencies and other policy-setting bodies on issues such as taxes, insurance, bankruptcy reform and fair housing. In addition, CAI members work through 33 state Legislative Action Committees, including in North Carolina to represent community association interests before state legislatures and agencies.

Manager Licensing Legislation:

Increasingly, states are recognizing the important and unique role that professional community association mangers play in a common interest community. They help guide and ensure the proper operation and support the governance process of volunteer boards in condominium, homeowner associations and cooperatives. As community association residents assess themselves to support the common amenities and infrastructure in such communities – a burden that would otherwise fall on the state or local unit of government, ensuring the quality of professional management and viability of the community association model has a positive impact on all state residents.

Ensuring that these professionals meet a minimum standard of professional development and understand the core competencies of community associations would be a strong consumer protection, helping ensure the proper operation of communities across North Carolina and providing the state and residents of community association a mechanism to respond to improper or unethical management practices. In addition, by ensuring that all professional community association managers have a minimal set of relevant skills, the state would ensure that each community has a professional serving to help volunteer boards implement governance decisions in a responsible manner that is consistent with state laws.

Highlighted Provisions of Proposed Legislation

NC Licensure Board for Community Association Managers (NCBCAM)

1. NCBAM is composed of 7 members:

    - 4 Community Association Managers appointed by the General Assembly;
    - 1 Home Builder appointed by the Governor upon recommendation of the NCHBA;
    - 1 Licensed Real Estate Broker appointed by the Governor upon recommendation of the NCAR;
    - 1 Public Member at Large appointed by the General Assembly.

2. NCBAM is responsible to:

(1) Administer this Article.

(2) Issue interpretations of this Article.

(3) Adopt rules as may be necessary to carry out the provisions of this Article.

(4) Determine the qualifications and fitness of applicants for licensure and license renewal.

(5) Establish an examination and approve educational curricula for persons seeking licensure under this Article.

(6) Adopt and publish rules governing the ethics and standards of practice for persons licensed as community association managers and create educational programs, books, and materials for licensees and the general public concerning community associations, their organization and proper management, and the rights of members.

(7) Issue, renew, deny, suspend, and revoke licenses and investigate and discipline licensees as provided by this Article.

(8) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to enforce this Article and discipline persons licensed under this Article.

(9) Employ and discharge an executive director and other professional, clerical, investigative, and special personnel and to set the compensation and benefits for those persons.

(10) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.

(11) Adopt a seal by which it shall authenticate its proceedings, official documents, and licenses.

(12) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(13) Establish fees as allowed by the Article.

(14) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.

(15) Request and receive the assistance of State educational institutions or other State agencies.

(16) Establish continuing education requirements for persons licensed under this Article.

(17) Call upon the Attorney General to provide legal counsel and representation -to the Board or, upon the approval of the Attorney General, hire another attorney to represent the Board, provided that the cost of legal representation is borne by the Board.

Community Association Manager

Any person who, for compensation or the expectation thereof, performs two or more of the following acts or services for a community association:

a. Acts with the authority of a community association in its business, legal, financial, or other transactions with association members and nonmembers.

b. Executes the resolutions and decisions of the government of a community association or, with the authority of the association, enforces the rights of the association secured by statute, contract, covenant, rule, or bylaw.

c. Collects, disburses, or otherwise exercises dominion or control over money or other property belonging to a community association.

d. Prepares budgets, financial statements, or other financial reports for a community association.

e. Negotiates contracts or otherwise coordinates or arranges for services or the purchase of property and goods for or on behalf of a community association.

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

The provisions of this Article shall not apply to:

(1) An officer or member of a community association who, for no compensation or expectation thereof, performs the acts or services of a community association manager.

(2) The acts or services of an attorney-at-law who is engaged to represent a community association or community association manager in any business that constitutes the practice of law.

(3) The acts or services of a real estate broker hired by a community association to sell or rent real property belonging to the association.

(4) A trustee in bankruptcy, court-appointed receiver, or any other person acting under the express authority of an order issued by a court of competent jurisdiction.

(5) The acts or services of a certified public accountant acting solely in the capacity of a certified public accountant.

(6) A person who is the regular, salaried employee of a licensed community association manager or an entity lawfully engaged in community association management while performing clerical or ministerial functions under the direction and control of a licensed community association manager.

(7) A person who is the regular, salaried employee of a licensed community association manager or an entity lawfully engaged in community association management who performs any of the acts or services described in G.S. 93A-87(4)a. through e., under the direct supervision and control of a licensed community association manager.

(8) The person, including a governmental agency, redevelopment authority, or redevelopment commission, who undertook the development and who has a legal or equitable interest in the property developed and who provides community association management until not more than 30 days after conveyance of all of the units or lots (including units or lots which may be created pursuant to special declarant rights) to unit or lot owners other than the declarant.

Fidelity bonds; segregation of accounts.

(a) Every community association manager engaged in community association management shall at all times be covered by a fidelity bond or an insurance policy complying with the provisions of this section.

(b) A fidelity bond required by this section shall be in an amount of at least twenty thousand dollars ($20,000) and shall:

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

(2) Cover the community association manager and all or a portion of the employees and protect all or a portion of the community association funds in the custody of the community association manager or community association employees acting under the community association manager's supervision.

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

(4) Contain any other provisions as may be required by the Board.

(c) A licensee shall furnish the Board proof of required bond coverage before engaging in community association management activities and upon license renewal if the licensee continues to engage in community association management activities.

(d) The fidelity bond may be issued to an individual licensee naming the licensee as the insured party or may be issued to a community association management firm naming the firm, all affiliated licensees, and others as insured parties.

(e) A community association manager with custody, dominion, or control of money belonging to a community association or money belonging to a member of a community association shall comply with all the following:

(1) Safeguard and account for the money promptly and accurately.

(2) Promptly deposit the money into federally insured accounts in a bank, savings institution, or credit union lawfully doing business in

North Carolina that consents to the jurisdiction of the Board for the examination of its records necessary to enforce this Article.

(3) Segregate the money in an account or accounts used exclusively for the deposit and maintenance of funds belonging only to one association and not commingle the money belonging to one association with money belonging to another association, the manager, or another person or entity.

(4) Obtain written authorization if any interest or other income earned by the money is to be paid to any person or party other than the association or member to whom the money belongs.

(5) Create and maintain books and records sufficient to demonstrate compliance with the provisions of this section and rules adopted by the Board.

(6) Upon depositing the money as provided in this subsection, expend, remit, or invest the money as directed by the association to whom the money belongs and provide an accurate account of any expenditure, remittance, or investment.

Associations

Owners and residents cannot exercise or protect their rights if they do not understand them. Today's lifestyle does not lend itself to the level of civic engagement that ensures the average person has experience if finding consensus, dealing with diverse viewpoints and actively engaging in a governance process. In fact everything about modern culture works against this, opinion/entertainment based news programs, reality shows and the internet allow us to isolate ourselves and limit our exposure to only viewpoints we wish to see. Thus, to be successful any effort to address disputes within community associations must include a component to educate board members of the governance process of community associations. In order to facilitate this vital education to the community boards and members across North Carolina the proposed legislation includes registration of community associations.

Affected Communities:

A. Community association whose membership includes the owners of 20 or more residential condominiums, townhouses, apartments, or lots, or any combination thereof shall register the association with the Board and

shall provide the Board with the following information about the association:

(1) The name and address of the association.

(2) The county where the property is located.

(3) The name and address of the community association's manager.

(4) Any other information the Board may require pursuant to rules adopted by the Board.

B. The Board may charge each affected association an annual registration fee not to exceed fifty dollars ($50.00).

Ideas to take under consideration for the Associations:

1. Associations must pay an annual fee to finance a Recovery Fund.

- The Recovery Fund is a trust fund used to pay court-appointed receivers and to restore Association monies in the event a community association manager fails to discharge its fiduciary responsibilities.
- NCBAM may petition the court to appoint a receiver if a community association manager appears unable to discharge its fiduciary responsibilities to an Association. Court-appointed receiver may take action to protect Association interests, including exercising control of all bank accounts. NCBAM also may petition court for an injunction to prohibit association manager from withdrawing association monies or disposing of association assets.

2. Property Owners Associations and Condominium Associations must obtain a blanket fidelity bond/employee dishonesty insurance policy with a minimum coverage.

3. Establishment of Ombudsmen or other Alternative Dispute Method.

4. Associations must establish reasonable procedures for resolution of written complaints, including:

- Maintaining records of each complaint for at least one year after acting on complaint;

- Providing complaint forms/written procedures to individuals wishing to file written complaints; and
- Informing Association members of their right to file a Notice of Adverse Decision with the Ombudsman/Mediation.
- Associations must provide documents and records to the Ombudsman/Mediation upon request, in order to assist members with using the complaint process.

CAI is skeptical of ombudsman programs. The records of such programs in Florida and Nevada have demonstrated that such programs do not necessarily ensure homeowner's issues with their boards are resolved. Nor have they demonstrated that such programs make finding a resolution of such disputes easier. Included in my submitted statement is a recent article published by in *Common Ground* (CAI'S magazine published bimonthly) that outlines the challenges such programs pose.

The biggest challenge is that many times disputes within community associations are not based on a board acting outside the scope of their authority, but from a lack of understanding of the governance structure within a community association. That is not to say that substantive disputes don't exist.

In our experience, moving dispute resolution from the local level to the state level creates a more sophisticated process and increases the time required and cost for a homeowner to seek redress in disputes within the community. It also takes the process of finding common ground and consensus out of the neighborhood and moves it to the state capitol, further confounding the challenge of encouraging homeowners to work through the democratic process in their community.

This being said, there are two programs in other states that CAI feels may provide a good point of departure for any discussions on this topic. First, in Montgomery County Maryland, the county has set up an alternative dispute resolution program to help association residents resolve disputes. Feedback from our members on the effectiveness of this program is mixed, but as it is based at the county level, it helps ensure that residents have easier access to the potential help they need. In Virginia, the state has recently created an Ombudsman program. Unlike the programs in Florida and Nevada, the Virginia program is showing some promise in addressing substantive issues while not getting bogged down in unsupported disputes based on personalities or a fundamental lack of understanding of community association governance. We would urge the committee to look to investigate and learn more about these two programs.

CAI would be happy to lend our experience and resources to help address these issues so that this committee can learn from the experience of other jurisdictions and find solutions that work for our communities.

Other Areas of Concern to the Committee:

Transparency and Responsiveness:

These concerns highlight many of the unique aspects of community associations and how their structure and operations often go beyond the framework of existing statutory legal structure regulating property ownership under state law. As the community association model came into widespread use only in the last 30 years, whereas most state property laws were adopted as much as a century ago, such dissonance is not uncommon. A lack of clearly defined statutory rights and responsibilities for boards, developers and homeowners is the most common source of friction within community associations.

CAI is dedicated to fostering responsive, competent community associations that promote harmony, community, and responsible leadership. Community association members and associations have rights and responsibilities that should be recognized in order to promote positive and thriving communities. The rights and responsibilities of each party are set forth below in the core areas of Building Community, Governance, and Business Administration.

BUILDING COMMUNITY

Community Association Members

Right To:

- Live in a responsive, competent, and harmonious community association governed by a reasonable, empathetic and impartial board of directors that treats each member with respect.

Responsible For:

- Complying with the governing documents of the community.
- Responding to association-initiated surveys and providing personal insight to help the board establish and implement the association's vision and priorities.
- Volunteering to serve on association committees and on the board with a sense of goodwill and without any conflicts of interest.

- Endeavoring to continuously learn about their community association and to provide constructive input to promote the positive evolution of the community.
- Being informed about issues of concern.
- Reporting all maintenance problems.
- Notifying the board or manager regarding possible employee misbehavior as well as good work, and respecting the relationships between the board and its employees and contractors, and the manager and its employees and contractors.
- Being aware of the contents of the governing documents, and understanding and adhering to their provisions.
- Damage to the community's common areas caused or proximately caused by the member, the actions of family, guests and tenants.
- Being a good neighbor and honoring others' rights to peaceful enjoyment of their homes and common area.
- Maintenance of unit and exclusive use common area, as defined in the governing documents.

Association

Right To:

- Receive goodwill and participation from members to ensure that members live in a responsive, competent, and harmonious community association.
- Have board members be treated with respect as neighbors and as volunteers who have committed personal time for the betterment of the community.
- Seek and receive assistance through community volunteers.

Responsible For:

- Including community building in their short-and long-term goals and planning.
- Fostering a sense of community spirit and encouraging participation in the community.

- Encouraging the establishment of committees whose purpose is to build a sense of community.
- Encouraging all members to have a stake in upholding the governing documents of the community.
- Acting as a facilitator and regarding organizational power as a temporary stewardship.
- Creating ongoing systems to welcome and orient new residents, including both owners and renters.
- Encouraging community activities, programs, and events geared toward openness, fun, and friendship.
- Operating in a professional manner and being responsive to the community's needs.
- Ensuring that community association rules and regulations represent a balance between the needs and obligations of the community and those of the individual.
- Dedicating themselves to continuous learning about and improvement of their association's operations.
- Providing an open forum for member input which may be during board meetings or at such other times as best facilitates communications between members and the association.

GOVERNANCE

Community Association Member

Right To:

- Be treated fairly and honestly by board members.
- Obtain all association fiscal information (excluding information concerning a particular owner or individual employee).
- Quiet enjoyment of residence and common facilities for their intended purpose in accordance with the association's rules and regulations.

- Participate in the process of governance through attending meetings of members, participating in the election of board members, serving on a committee, or running for a seat on the board.
- Have access to association records as specified in governing documents and state law.
- Attend board meetings in whatever manner such meetings are being held (in person or via electronic or telephonic means).
- Learn about board actions, and have access to all approved minutes of the association (other than executive board minutes).
- Live in a home free of conditions within the control of the association that materially interfere with peace, comfort or health.
- Expect all board members to be fully informed and knowledgeable in the association's business matters and the contents of the governing documents, to expect them to seek professional advice when appropriate, and to carry out their fiduciary duties with reasonably prudent business judgment.
- Have legible copies of all governing documents of their community.

Responsible For:

- Participating in member activities, i.e. attending member meetings, serving on committees and participating in other activities which assist the board in governance or enhance the community.
- Participating directly in the governance by casting votes or sending proxies for every election or ballot.
- Respecting the roles of all participants in community governance, and recognizing and honoring those differences of opinion.
- Notifying board of directors when covenant violations are observed or discrepancies in governing documents are noted.

Association

Right To:

- Exercise the authority given to the association under the governing documents and the state laws in which the association is located.

- Make and enforce necessary rules and regulations as authorized in the governing documents.
- Set assessments, according to the governing documents and state laws, to provide for the maintenance and improvement of the common areas.
- Expect all owners to be aware of, and abide by, the provisions of the governing documents, and to expect all owners to abide by the governing documents and to carry out their responsibilities.
- Carry out its duties through the duly elected or appointed board, free of unwarranted interference or threats.

Responsible For:

- Carrying out the duties of the association through a duly elected or appointed board.
- Holding effective, efficient board meetings open for owners' attendance (excluding executive sessions).
- Providing members with access to corporate records (excluding those which infringe upon the privacy of other owners).
- Suggesting and presenting amendments to the governing documents for the owners' approval.
- Enacting reasonable, enforceable rules and notifying owners in a timely fashion of scheduled consideration or new or amended rules before adoption, diligently enforcing such rules in a non-arbitrary manner, and holding fair and impartial hearings for alleged violations.
- Conducting open, fair and honest elections.
- Diligently ensuring each board member fulfills his or her fiduciary duties.
- Obtaining insurance coverage as is required by the governing documents or which the board deems reasonable, including director and officer liability insurance.
- Not unlawfully interfering with an owner's access or peaceful enjoyment of the residence.

BUSINESS ADMINISTRATION

Community Association Members

Right To:

- Be apprised of and have available the business processes affecting homeowners, such as recreation class sign-up, hall rental, design permit applications, complaints, suggestions, etc. in a user friendly process and format.
- Have copies of proceedings of the board made available upon request, and receiving communications via media such as newsletters, closed circuit television and Internet.
- Have an appeals process for decisions made that affect the members, either individually or collectively.
- Have business decisions of the community association made which uphold a member's resale value of their ownership and do not lessen the other benefits of owning a home in the community association.

Responsible For:

- Being aware of the overall direction and condition of the association from a business standpoint, and provide input and personal involvement when and where appropriate.
- Understanding the tremendous responsibilities of the community association board and that business decisions are based on a variety of viewpoints and legal limitations and requirements.
- Making timely payments of assessments of all types, fines, and other charges levied by association.
- Keeping the association aware of their current address.

Association

Right To:

- Be treated with respect when acting in good faith to make decisions in the best interests of the community association members and the association.

- Conduct business of the association as prescribed by state and local laws, and association documents.
- Exercise appropriate business judgment in matters not addressed or directed by state or local laws, or association documents.
- Diligently collect all monies due from members.

Responsible For:

- Acting and making decisions that are ethical and fair, and are for the benefit of the association as a whole, with latitude to make exceptions where warranted on an individual basis.
- Providing for the maintenance of the association's assets, including common areas (grounds and facilities) and finances, by planning and implementing necessary insurance coverage, reserve studies and the resultant necessary reserves, and financial and management audits and reviews.
- Ensuring proceedings are efficient and effective in conducting the business of the association, such that decisions are sound and decisive, based on information/data and professional advice where expertise is not available on the board or staff.
- Making decisions that minimize the exposure of the association to liability and exercising reasonable business judgment in decision-making.

Document Disclosures to Purchasers in Community Associations

CAI believes that homeowners should be informed about association matters that may impact their decision to purchase a home/unit and will educate them about their personal rights and responsibilities with regard to the community association. Disclosure documents/resale certificates are invaluable consumer information tools because it is vital that buyers know what they are buying. Disclosure documents/resale certificates should be mandated by state statute to ensure that every buyer is aware of essential information relating to his new home or unit and the community association.

CAI supports mandating disclosure documents/resale certificates for all ownership transfers of homes or units in a community association to ensure that

the association is notified of every pending sale and that the transferee is aware of the obligations with respect to the property. The scope of such disclosures should include the following considerations:

- Amount of the monthly assessment for common expenses;
- Approved special assessments or maintenance fee increases;
- Association governing documents;
- Amount of reserve and capital funds available and committed to current or pending projects;
- Reserve study, if any;
- Current operating and reserve budgets and year-to-date financial statement;
- Insurance certificates indicating association-provided coverage;
- Pending litigation excluding routine assessment collections;
- Outstanding judgments against the association;
- Any amounts the current owner owes the association;
- Notice of any association alleged and uncured violation pertaining to the home/unit;
- Fees relating to the transfer of ownership or other transactions;
- A statement of the remedies available to the association as a result of non-payment;
- Current collection policy;
- Leasing restrictions
- List of association amenities
- Contact information for the association

Respectfully Submitted

Robb Baer, CMCA, AMS, PCAM
President – NC Chapter of CAI

Robb Baer
att #3
3-4-10

Rise of the Ombudsman

Common Ground, July/August 2007

Juliette Guilbert

If an association ombudsman is good enough for Florida and Nevada, maybe it's good enough for other states, too.

When Claire Fortini moved into the Seaport Oceanfront Condominiums in Cape Canaveral, Florida, she got a bit more than the retirement paradise she was expecting. The four new high rises were plagued by maintenance problems. The builder was unresponsive and the condominium association seemed powerless.

"There was such acrimony between two of our three board members that nothing was getting done," Fortini says. "The association president was caught between the developer's representative and the homeowner member. The board meetings would end in shouting matches, and no business was conducted."

"We went through three board presidents from January to August [2006]," she says. "Many residents had never lived in a condominium before and had no clue of the law. We were looking for somebody to help us out of our morass." That somebody was Danille Carroll, Florida's condominium ombudsman, who spoke at a Seaport Oceanfront board meeting in August 2006 about board responsibilities; recommended five board members instead of three; and called for volunteers. Fortini stepped forward.

"The next thing I knew, I was board president," she says. By the end of September, the board had hired a new manager and attorney, created a new budget, and begun to address maintenance issues. "I have no idea how things would have turned out without the ombudsman's help. Maybe the state would have had to take over, we were in such turmoil."

In 2004, Florida became the second state to create an ombudsman for community associations; the other, Nevada, has had an Ombudsman for Owners in Common-Interest Communities since 1997. In recent years, legislatures in several states, including California and New Jersey, have contemplated similar positions, prompted largely by constituents concerned about issues ranging from contested board elections to whether they can put political signs in their front yards. Organizations like the ACLU and AARP are pushing for ombudsmen, pointing out that in some states, no government agency is enforcing condominium statutes, while in others, agencies are understaffed and underfunded.

But many in the community association industry—including attorneys, managers and some board members—view the ombudsmen with trepidation, fearing state meddling and reams of red tape. "Resolving homeowner disputes and building effective community governance cannot be outsourced to the statehouse," says Andrew Fortin, CAI's vice president of government and public affairs. "It's not an efficient use of resources to have state employees sorting out disputes relating to private, contractual agreements between neighbors. Our focus is on empowering individuals to solve these problems within communities rather than to place that burden on the state."

This is more than mere rhetoric. Since 2004, CAI has promoted *Rights and Responsibilities for Better Communities*, 42 principles to help association-governed communities promote harmony, enhance communication and reduce conflict.

CAI has successfully opposed ombudsman legislation in California and Virginia, and its New Jersey Legislative Action Committee is fighting a bill that would create an ombudsman within the Department of Community Affairs.

Rutgers Law professor, Frank Askin, says that an ombudsman is needed in New Jersey to advise and advocate for homeowners—a task currently handled, he says, by a lone worker in the state's Department of Community Affairs. "People are desperate for help when they have disputes with their associations," he says. "Most of these people can't afford to hire a lawyer—and, if you do, you're paying for both sides, because your assessment is also paying your association lawyers. Somebody's got to represent the interests of the homeowners."

DEFEATED BY SUCCESS

Where community association ombudsmen do exist, the job can be fraught with conflict. Florida's first ombudsman, Dr. Virgil Rizzo, was abruptly fired in June 2006 by then-Governor Jeb Bush, who had appointed him 18 months earlier. According to Rizzo—and to outraged supporters like Jan Bergemann, president of Cyber Citizens for Justice, a homeowners' group—he was fired for doing too good a job of advocating for owners, monitoring contested board elections, and suggesting how to improve the Division of Condominiums, part of the state's Department of Business and Professional Regulation (DBPR).

"The job was being carried out too effectively, according to normal operating procedure in Tallahassee," Rizzo says.

Bergemann agrees. "From day one, the ombudsman office had serious problems because there was no financing," he says. "The attorneys didn't like it because somebody was watching what they were doing, and sometimes what they are doing doesn't need the light of day. And with all kinds of maneuvering, they finally got the governor to fire him. A lot of owners thought that was a serious mistake."

At the time of Rizzo's firing, a DBPR spokesperson interviewed by the *Miami Herald* said the retired physician had failed to follow state procedures such as submitting time sheets, and had refused to respond to a records request from the Fort Lauderdale law firm Becker & Poliakoff, with whom, according to Rizzo, he'd had a disagreement over election monitoring. An attorney with that firm, Donna Berger, says that she isn't sure why Rizzo was fired, but she believes he overstepped the bounds of his office, and favored homeowners involved in disputes with their boards.

"He was involved in a lengthy, costly legal battle with his own board," she says. "A lot of his proposals seemed to indicate a bias. He had a very clear direction for that office that would have given him a lot more power and a much bigger salary than initially envisioned, and that's where he ran into problems."

IT'S ABOUT EDUCATION

Governor Bush named Carroll the new ombudsman immediately after Rizzo's firing. A former regulatory prosecutor with the state Department of Health, Carroll had no experience in community association law, but ruffled fewer feathers in her first year on the job than did Rizzo. Carroll stresses that she is an unbiased advocate for all. She gets high marks from people like Berger, who praises her emphasis on education about, rather than enforcement of, condo law. "Danille is great," Berger says. "We've worked with her—education is the way to go. You've got the division doing enforcement already." Even Rizzo praises Carroll's ability to "network with the politicos in Tallahassee."

Carroll says she's spent much of the past year learning about community association issues and talking to residents, boards, and attorneys. Although her office is asked "on a daily basis" to help resolve intra-association disputes, Carroll says, "It's not just owners. We get calls from a lot of board members and attorneys. It's a good mix of phone calls."

However, according to State Rep. Julio Robaina, who pushed for the ombudsman's position in 2004, it was ultimately the need to help owners—especially in disputes with their associations—that drove the legislation that created Carroll's office. "I felt owners needed somewhere to get information, help, and training to understand the bylaws and the election process—a neutral party, who would be there for the average citizen who was having problems in the association," Robaina says.

Of course, many industry professionals and board members believe that more state interference is the last thing associations need and maintain that the vast majority of communities are not, in fact, plagued by dissent and malfeasance. CAI's California Legislative Action Committee last year helped defeat a bill to establish a community association ombudsman in that state. Committee administrator Skip Daum says that the group supported the portion of the bill that created homeowner education programs, but opposed the creation of an ombudsman with enforcement powers.

"It would have levied fees of $40 million on homeowners to create a new agency that would have told associations what to do," he says. "If they failed, they'd be fined." California has no agency to enforce community association laws, but Daum says that an ombudsman was prompted more by legislators' desire to please voters than any real need. "We thought it was an overreaction to complaints from constituents to 'do something,'" he says.

DEEPER POCKETS

Daum echoes the cautions issued by many in the community association industry about the cost of an ombudsman. Lucia Anna "Pia" Trigiani, Esq., a member of CAI's Virginia Legislative Action Committee, says that when Virginia considered an ombudsman years ago, her group had concerns. "If you want a full-blown regulatory program, you've got to pay for it; and do associations want to add that to the list of what they have to pay for?" she asks. (In Nevada, associations pay $3 per door per year to the ombudsman's office; the Florida ombudsman's office receives $560,000 per year from the state Condominium Trust Fund.) Rather than an ombudsman, Virginians got the Common Interest Ownership Management Fund, which charges associations an annual fee of $25 for education programs.

In some states, other agencies perform some of the functions of an ombudsman. In Hawaii, the Real Estate Commission administers condominium governance mediation programs and an education fund. In Arizona, residents involved in disputes with their boards have the right to a hearing before an administrative law judge in the state's Office of Administrative Hearings (OAH). Pat Haruff of the Coalition of Homeowners for Rights and Education says her group favors this system over an ombudsman.

"A state ombudsman would have no teeth," she says. "For instance, if your board violates the open meeting law, now you can take them to the OAH, which is going to order them to cease and desist and fine them." The OAH also has the power to turn over boards it deems repeat offenders to the state attorney general, who has the right to remove them.

Curtis Ekmark, Esq., co-chair of CAI's Arizona Legislative Action Committee, says that his group has some concerns about the system. "There's no statute of limitations, the filing fee is really low, there are no real rules of evidence, and there is an unlimited ability to fine associations," he says.

Haruff believes such criticisms are unfounded: the filing fee for the self-funded program is $2,000, she says, far higher than the $50 it costs tenants to file OAH complaints against their boards. As for the fines, she says they are probably too low.

A LITTLE POWER

The disagreement between Haruff and Ekmark gets to the heart of the ombudsmen controversy: enforcement. Florida's ombudsman has no power of enforcement, but that may soon change. Rep. Robaina, with the support of Bergemann's group, is sponsoring legislation that will expand the office's purview to include investigation of fraud complaints and some powers of enforcement—powers Carroll says she is reluctant to take on. "I think the most important component is to be neutral, and with enforcement and investigation you're taking sides." Bergemann replies that in some instances, taking sides is precisely what is called for.

"We had a case in Boca [Raton] where a board president embezzled $650,000," he says. "The homeowners tried for a year to get the documents, but instead got nasty letters from attorneys, and one even got sued for harassment. That's why we need the ombudsman to have a little power."

Robaina says that he envisions the ombudsman as the point person for condominium fraud programs that will train detectives to investigate alleged crimes. "A lot of times, people want these problems to continue, simply because there's money to be made," he says. "When there's a problem, boards call the law firms that represent them, and they bill."

In Nevada, the ombudsman's office has had 10 years to outgrow the initial trauma of its birth, and at least some community association professionals have made their peace with it. Pamela Scott, who is director for community association management for the Howard Hughes Corporation, a major developer, thinks an ombudsman is a good thing, although, she says, it doesn't make her job any simpler.

"It has brought the bureaucracy from a regulatory agency into the job," she says. "Managers have to cross t's and dot i's on just about everything. It's time consuming." One of the biggest headaches, Scott says, is the sometimes-massive document requests. "I had one request for a copy of every design review submitted for paint color changes with no time period," she says. "This is an association of 15,000 homes. There is no way to comply without hiring a full-time person for a year."

COMMUNITY DEFENDER

Judy Farrah, chair of CAI's Nevada Legislative Action Committee and a property manager with Capital Consultants Management Corporation, agrees that the process can be bureaucratic. "It takes forever to get a response," she says. "But we're definitely seeing that change. The new ombudsman has only been in place for about a year, but she's made more strides in that time than we made in the nine years before that."

Perhaps that's because she's had experience with warring parties. Nevada Common Interest Community Ombudsman Lindsay Waite says she was prepared for her new job by her experience as a public defender in Maryland. "In dealing with different people and issues, with a personal investment in the outcome, it's very similar," she says. "Going to court, interviewing clients, and negotiating—those skills are very helpful when I'm dealing with different interest groups and conflicts."

Waite's duties include educating homeowners and boards about their rights and responsibilities, maintaining a state registry of community associations, and reviewing homeowner complaints.

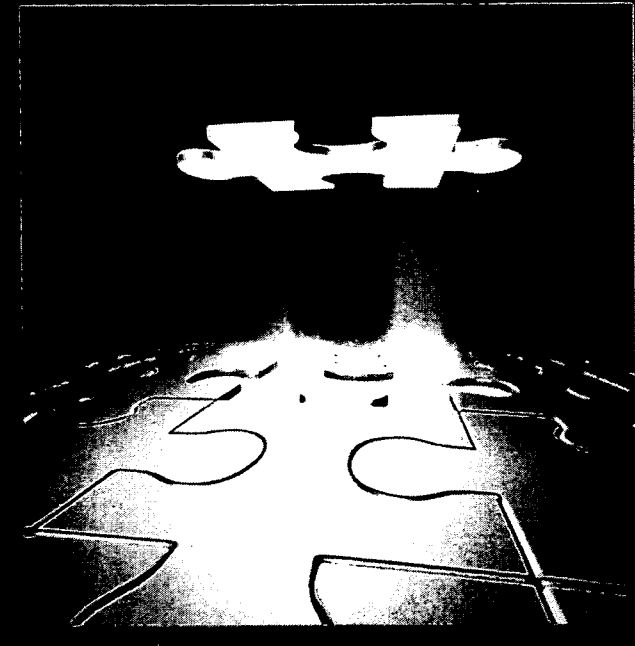
She meets with each party individually, then sets a conference date to try to work it out—about 28 meetings a month. If they can't come to an agreement with Waite's help, they proceed to the Nevada Real Estate Division's alternative dispute resolution program, a prerequisite to going to court.

"We get a number of cases where the homeowner didn't pay a small fine, and with penalties it grows into a large fine," she says. "I don't say one side or the other side is right. I let them talk it through." In many cases, miscommunication is the problem. When misbehaving boards are informed of the law, they frequently comply.

Waite also is working on education initiatives—meeting with managers' groups, association attorneys, board members, and homeowners. Like Carroll, she prizes her role as a neutral resource for all, rather than a champion for one or the other. "Some parties have talked about this position advocating for the homeowners," she says. "But I think it's good to have a neutral person and for parties that are in contention to have at least one chance to sit down and talk."

For states considering ombudsman programs, the unanswered question remains enforcement. Ombudsmen can educate, facilitate, and mediate, but when these measures fail, who should take the reins? The answer, of course, depends on whom you ask: Most in the industry remain chary of handing more control over to the state, but many homeowners are eager to see more enforcement of the laws that govern common interest living. Ombudsmen as neutral facilitators may be palatable to all; the idea of the ombudsman as a state regulatory agency will have to make its way through the (most likely contentious) legislative process.

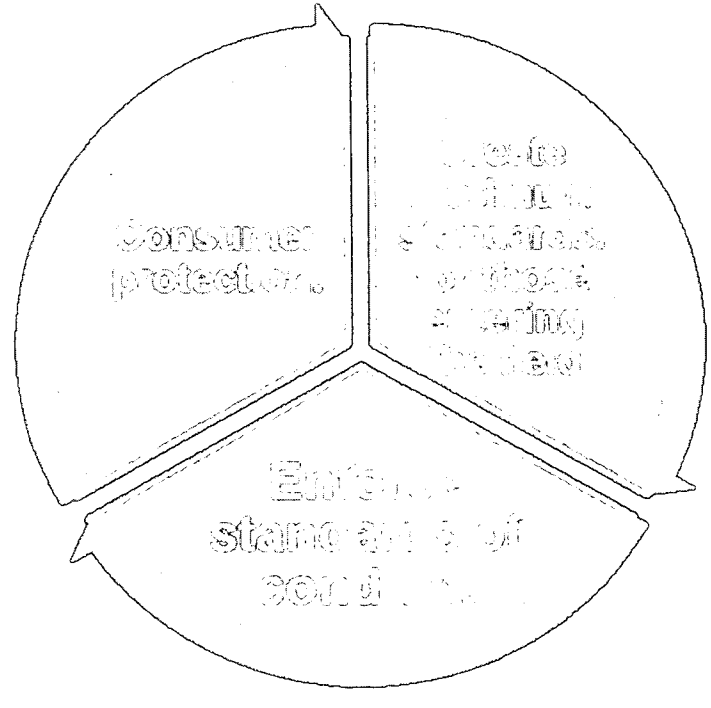
Strategic Dialogue: Manager Licensing NC House Select Committee on HOA's



community
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Rob Bell
ATH 4 3-4-10

Purpose of Manager Licensing Bill



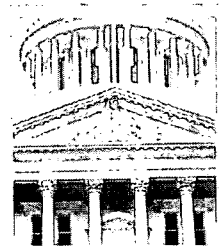
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Components of Licensure

- Require an objective examination
- Contain an appropriate definition of community manager
- Require appropriate community association management education as a pre-requisite for exam
- Continuing education
- Standards of conduct
- Governed by board of community managers and other industry professionals
- Separate program administration from an existing state agency

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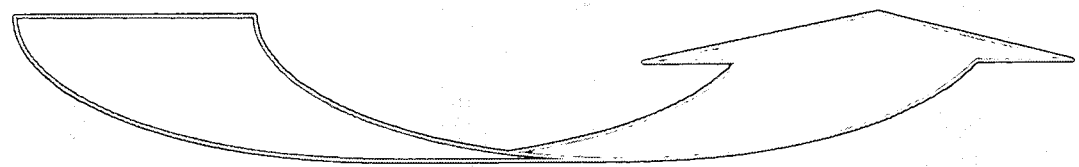
CAI Policy:



In states proposing licensing, CAI Supports:

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CAI supports:
Regulation through the promotion of CMCA certifications and other CAI member developed designations



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CMCA Program

The CMCA program

- was developed and is maintained through the guidelines for quality certification programs established by the National Organization for Competency Assurance's (NOCA) guidelines for quality certification programs:

The content of the CMCA program

- is based on the knowledge, skills, and competencies required for competent performance of a professional role, specific work-related tasks and responsibilities.

CMCA certificants

- have completed the required education and training needed to demonstrate the accomplishments of the intended learning.

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CMCA Program

The CMCA examination

- is periodically revised by subject-matter experts and qualified individuals to ensure that it continues to reflect the program's scope and purpose (every five years).

The maintaining of CMCA

- each certificant is required to engage in continuing education courses designed to measure or enhance constant competence.

The CMCA is portable.

- Legislators can use success from another state without a significant financial investment. The CMCA allows employers to recruit from other states and professionals to practice in different states without an additional investment.

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CMCA Program

The CMCA

- serves as a recognized standard appropriate for regulatory purposes and for decision making related to hiring or promotion, and the program was developed in a manner that is consistent with generally accepted measurement principles and is legally defensible.

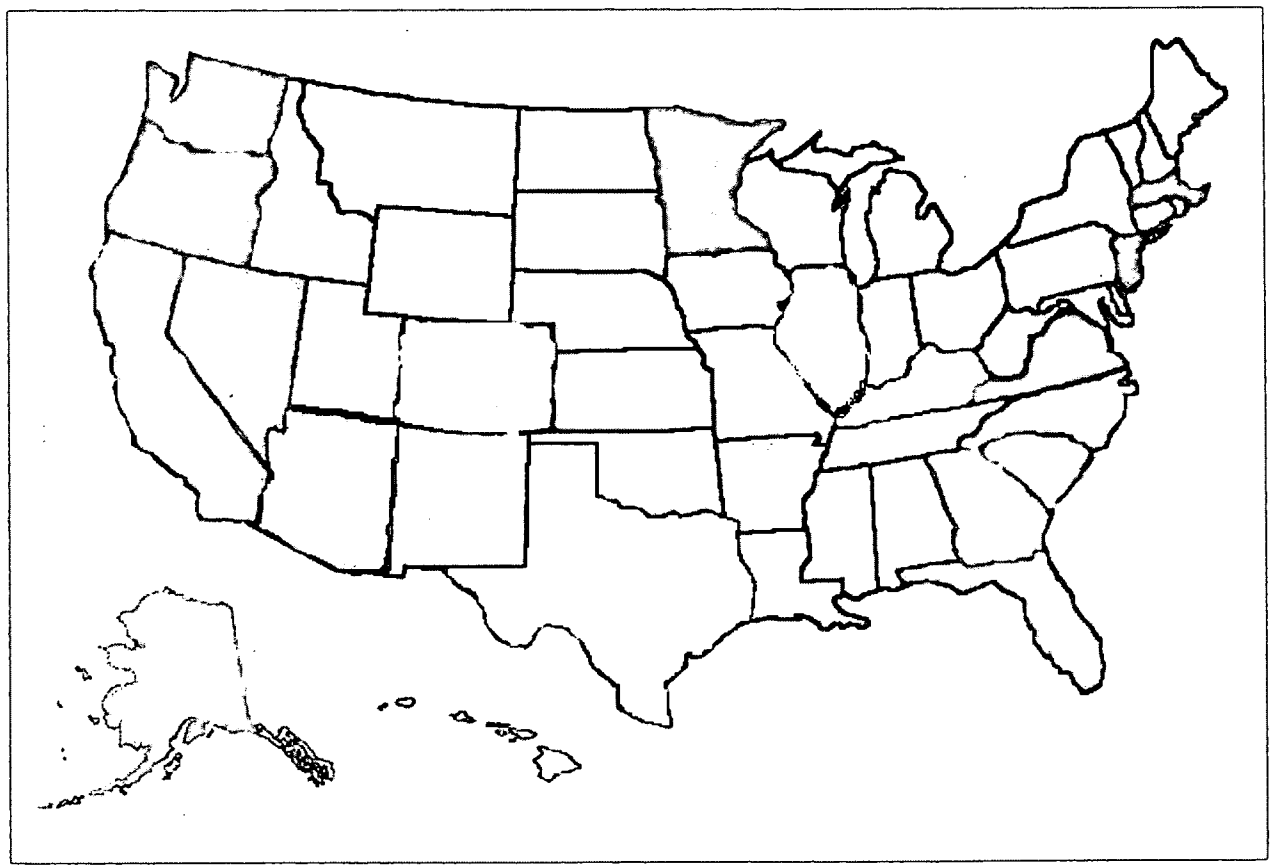
CMCA certificants

- are required to uphold Standards of Professional Conduct and are subject to disciplinary policy.

Adopted from NOCAs "Defining Features of Quality Certification and Assessment-Based Certificate Programs" (SOURCE)

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Current States with Legislative Activity



- Existing law
- Pending legislation
- Advanced discussion
- Discussion
- CAM as Brokers (defeated)
- "Register and tax" bills

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att#5 3-4-10

The North Carolina Justice Center
Presentation to the
North Carolina House Select Committee on Homeowners Associations

March 4, 2010

Recommendations

I. Adopt Minimum Protections for Homeowners

The Committee should consider the adoption of statutory minimum protections to better protect homeowners from abusive Homeowner Association practices. Homeowner Associations could adopt broader or stronger protections if they chose to. Such protections might include:

1. waiver of fines or past due association dues or fees if demand for payment is not made by the association within 90 days.

2. provisions to protect against misuse and/or embezzlement of association funds by having minimum accounting standards for associations

3. mandatory installment payment plans that must be offered prior to the filing of a lien for assessments.

4. prohibition against incurring attorney fees for collection activity on accounts below a certain monetary amount

5. provisions designed to protect homeowners in circumstances where the same attorney or law firm represents multiple related entities developers, associations, and management companies or profits from collection activity

6. prohibition or significant limitation of the use of "power of sale foreclosure" or "judicial foreclosure" in the collection of debts and consideration of the use of a statutory lien and collection through a judgment instead

7. prohibition against associations requiring homeowners to agree to waive or limit use of protections provided by the law

8. provisions against selective, arbitrary, and discriminatory enforcement of covenants

9. provisions to ensure fair association elections and dismissal of officers

10. provisions to ensure properly noticed and open meetings

11. provisions for alternative dispute resolution

II. Establish a Homeowner Association Enforcement Division

Currently, homeowners have little recourse in circumstances where illegal activity related to their homeowner association has taken place. For most homeowners, hiring an attorney to represent their interests is too expensive. Homeowners would benefit greatly if there were a division within a state agency dedicated to representing homeowners in instances where illegal activity has occurred. With the existence of such an agency, it is also likely that fewer violations of the law would occur. Such a division might be established with the following:

1. a funding mechanism requiring an annual fee on homeowner associations to directly fund the division and enable the division to hire attorneys, accountants and support staff

2. requiring associations to register with the division and renew registration annually and provide information and documentation such as contact information, bank account information with investigatory consent forms, property description, etc...

3. requiring management companies to register as well, to update registration with a current list of associations they manage, and provide bank account information with investigatory consent forms, etc...

4. consider licensing of management companies

5. minimum accounting standards for handling association funds

Alfred Ripley
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www.ncjustice.org

att#6 3-4-10

Jayne Nelson (Rep. McGee)

From: Rep. Beverly Earle
Sent: Thursday, March 04, 2010 12:42 PM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee); Susan West Horne (Rep. Cleveland); Ruth Merkle (Rep. Heagarty); Renee Weaver (Rep. Howard); Mary Capps (Rep. Wray)
Subject: Members of the Select Committee on Homeowners Associations

Attachments: Regarding the NC House Select Committee on Homeowners Associations Meeting Tuesday February 2 2010.htm



Regarding the NC House Select ...

FYI

Print For Committee Meeting

From: George G. Rose [georose@mindspring.com]
Sent: Friday, January 29, 2010 10:52 PM
To: Rep. Beverly Earle
Subject: Regarding the NC House Select Committee on Homeowners Associations Meeting, Tuesday, February 2, 2010

Dear Ms. Earle,

As my rep from Mecklenburg on this committee, I would like to tell you of my concerns as a townhouse owner in south Charlotte about the way HOA/TOA Boards are trampling upon fundamental property rights of individual owners.

Specifically, my TOA Board passed an amendment in 2009 that limits the number of rentals in my **Amherst Green** townhouse development (Rea Road)to three units out of 52 (5%). Each rental must be approved by the Board after it reviews the lease and limits it to one year.

In my case, I purchased my townhouse in 2006 as a 1031 Tax Deferred Rental property. Under the terms of the 1031 law, I **must** rent the townhouse.
This was clearly revealed at the time of my purchase of this townhome and to the Board. Now, the amendment, passed in 2009, attempts to abrogate the terms of my 2006 purchase **retroactively, after the fact**. I believe this violates a fundamental principle of law against ***ex post facto*** laws.

I opposed the amendment openly and communicated my concerns to townhouse neighbors. The amendment failed the first time. Then the TOA Board brought in a lawyer who was clearly working for the amendment to an open discussion meeting. With minimal changes, the amendment was represented; the Board and the property management (Hawthorne) worked closely together to monitor the votes as they came in (they knew who had voted how). The second time the amendment passed with the minimum required votes (2/3rds).

This experience showed me that Board governance can be extremely unfair. The lawyer and the property management group (both paid for by TOA dues) were clearly biased and helped those in favor of this amendment. Others who opposed the amendment were intimidated by the situation and afraid to openly oppose the Board (and the unruly group pushing this amendment that feared rentals would hurt their property values). I wonder if some owners were individually pressured on the second vote?

I understand the limiting of rentals has been a popular amendment to covenants thruout the country. I was in touch with the HOA-USA; I was told that rental limits had failed in court in another state. I accept that rental limits are a reasonable clause in a covenant BUT only if they are clearly stated in the covenant at the time of purchase and they are a reasonable number (>20%). Even then, they are a hardship with the current real estate market conditions. Many need to sell and can not. Many need to rent now because they can not sell when they have to move to find work. This is a hardship; this is not right; I do not accept **ex post facto** rental limits.

I do not think my experiences are unusual; I have heard many other horror stories of arbitrary behavior and intimidation by TOA/HOA Boards. So I think the general process and rules governing Boards needs to be reviewed with an eye towards protecting the property rights of individual owners. I hope the ***Select Committee*** takes a hard look at this pattern.

I would appreciate your views in this matter. I ask that you reply here. I would be glad to have this read at the committee meeting and forwarded to others that you think favorable.

Please advise as to how I could help further.
Thank You,

George Rose
Wandering Way Drive
Charlotte, NC 28226
704-365-4652

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS 3-4-10

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Jordan Price Raleigh
Cody Thomas	NCAR
W. Gardner Cudyepp	Personal Interest
HOWARD RIPPETOE, PE	VNH - RIPPETOE ASSOC. PC.
Alex Bidot	NC Housing Coalition
Jessica Parker	NC Housing Coalition
Carley Ruff	" "
Diana Starling	Homeowner
Jennifer Mooney	LandArc Property Mgmt.
Chris Kukla	CRL
Sara Weed	CRL

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS 3-4-10

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdish	LML HOA
Miriam Baer	NC Real Estate Commission
Bryan Yonish	Homeowner 12 MARSH LANDING CT Durham, NC 27703
Sara Stubbins	CAI-NC Exec Dir 1414 MLK Blvd Chapel Hill NC 27514
John McInerney	CAI Board of Trustees
JOHN LAWTON	COMMUNITY ASSOCIATIONS INSTITUTE LEGISLATIVE ACTION COMMITTEE 8307 MOURNING DOVE RD RALEIGH 27615
DE Bowell	AOC
Hal Carmichael	Raleigh attorney
Rodd Baek	CAI
Paul Mengert	Association Mgmt Group Greensboro
Blair Williams	Wake County Clerk of Court office
Michael Shiflett	INTERNEIGHBORHOOD COUNCIL of DURHAM COMMUNITY ASSOCIATION INSTITUTE

VISITOR REGISTRATION SHEET

Committee on Homeowners Assoc. 3/4/2010

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Al Ripley	NC - Justice Ctr
Louis DeVita	Homeowner - Brunswick County (SEA TRAIL)
FRANK WIEDMAN	HOMEOWNER - BRUNSWICK COUNTY (SEA TRAIL)

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27601

March 23, 2010

MEMORANDUM

TO: Members of the House Select Committee on Homeowners Associations

FROM: Representative Jennifer Weiss, Co-Chair
Representative William C. McGee, Co-Chair

SUBJECT: HOA Meeting Notice

There will be a meeting of the House Select Committee on Homeowners Associations:

DATE: **Wednesday, March 31, 2010**

TIME: **1:00 pm**

LOCATION: **Room 421, Legislative Office Building**

Committee members, please advise Susan Doty, Committee Assistant, at (919) 715-3010, or e-mail weissla@ncleg.net if you are unable to attend.

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

AGENDA

March 31, 2010
1:00 p.m.
Room 421 LOB

I. Introduction

Representative William McGee, Co-Chair
Representative Jennifer Weiss, Co-Chair

II. Overview of the Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act

Carl H. Lisman, Esq., Commissioner,
National Conference of Commissioners on Uniform State Laws

III. Issues Related to Solar Access Law

Bob Leker, Renewables Program Manager,
State Energy Office, Department of Commerce

IV. Committee Discussion

V. Adjourn

House Select Committee on Homeowners Associations Meeting

March 31, 2010
1:00 pm

The House Select Committee on Homeowners Associations met on Thursday March 31, 2010 at 1:00 pm in the Legislative Office Building in room 421 to hold a meeting on issues concerning homeowners associations. The following members were present: Co-chairman McGee (presiding), Co-chairman Weiss, Representatives Howard, Cleveland, Earle, Heagarty and Wray. For visitors in attendance see the attached Visitor Attendance Sheet.

Representative McGee opened the meeting and thanked the staff and sergeants-at-arms for preparing the meeting. He then recognized Representative Weiss to introduce Mr. Carl Lisman, a lawyer from Vermont who is an expert on real estate and homeowners laws and has been involved in drafting model laws for several years.

Mr. Lisman addressed the committee about the Uniform Common Interest Owners Bill of Rights Act (see attachments 1 and 2) and gave a power point presentation to explain the definitions, the evolution, the history of the Act and the problems and solutions to management of planned communities (see attachment 3). He added that "hot issues" at this time are: association records, foreclosures, fair elections and fines and debts. Flags and religious symbols are not addressed as they could not get a consensus on how to handle that issue. Also notices and procedures regarding notices are addressed in the Bill of Rights

Representative McGee thanked Mr. Lisman and opened the floor to questions.

Representative Weiss asked Mr. Lisman who was around the table when the Uniform Bill of Rights was written. Mr. Lisman said anyone who had a stake in the outcome, about 80 people including FannieMae, FreddieMac, FHA, VA, bankers, developers, managers, legislators, homeowners groups and credit unions.

Representative Weiss asked about the term "reasonableness" and what is the difference between declarations and rules. Mr. Lisman said declarations do not have to be reasonable but rules do.

Representative Weiss asked when he recommends that homeowners find out about covenants. Mr. Lisman responded that rescission provisions are included that includes the delivery of the public offering statement or the resale certificate that includes a 7 day "cooling off period" before the contract is final and that gives the purchaser time to read the document or hire a lawyer to review it.

Representative McGee asked Mr. Lisman to speak about Article 5, Government Registration, in the Uniform Act. Mr. Lisman said all states have dropped Article 5 in the adoption of the Uniform Act.

Representative Heagarty asked if there is no specific law, how one combats an issue with a board when they use "discretion" in their decision about what a homeowner may or may not display. Mr. Lisman said with great difficulty. The owner can go to the board beforehand and bring up the rule and put it back on the board.

Representative Wray asked how the associations keep up with people moving in and out of the community. Mr. Lisman responded that the most common way is through the use of a resale certificate when the homeowner notifies the association, they will issue a resale certificate to the owner to give to the purchaser. If the seller does not request a resale certificate, then the purchaser assumes responsibility for the property.

Representative Weiss asked how difficult was this Bill of Rights to get through the legislative bodies for approval. Mr. Lisman answered that most people approved without a problem or changes.

Representative Weiss directed a question to staff as well as Mr. Lisman if the Bill of Rights covers all community associations or just new ones. Mr. Lisman responded that it applies to every community in the state regardless of how long it has been there.

Representative McGee asked Mr. Lisman to comment on liens and the banks representation on this legislation since some communities are dealing with foreclosures and auctioning of properties. Mr. Lisman answered that the Bankers Associations in most states thinks it works well. The first mortgage comes before the association liens and assessments which means the mortgage company cuts out both and it is in the best interest of the association to buy out the mortgage offered at sale but they were careful not to tread on the lenders toes as to not have the whole legislation fail.

Representative Weiss asked regarding the legislation being retroactive, is there an involvement of impairment of contract. Mr. Lisman said originally they thought not, and they have had no court cases, but he could not definitively say that there could not be.

Representative Weiss asked about the cap on legal fees and how that is handled in the Bill of Rights. Mr. Lisman responded when the declarations are written, it is up to the developer to include what categories of expenses fall within the gambit of the associations lien except assessments. At some point the homeowners may take over the association and amend the document.

Representative Weiss asked about excessive fines by homeowners associations. Mr. Lisman said he thought at some time the judge will say that the fines are unreasonable. Sometimes that does not happen and most times it is because two people are fighting for principle and no one wins in that case.

Representative Weiss asked about flexibility and a case involving a fence that was approved and then the owner was told it was illegal and had to be removed. Mr. Lisman said under the Bill of Rights that should not happen. The design review board would have already handled it and made recommendations to the homeowner what was legal to build.

Representative Weiss said that homeowners have no recourse when problems with the homeowners associations take action and hire a lawyer to fight them because they are paying dues that are used to pay the opposing attorney. Mr. Lisman responded that two provisions handle that (1) court may order that reasonable attorney fees be paid by that homeowners association (2) vote the board out.

Representative Heagarty asked what options beyond taking legal action do the homeowners have concerning a rogue board that will not hold an election. Mr. Lisman responded that 20% of the homeowners can call for a meeting and if the board does not call one, the homeowners with 20% can call it and vote them out.

Representative Heagarty asked if there is any other action homeowners can take. Mr. Lisman answered that the homeowners can bring a lawsuit against the directors.

Representative McGee asked if the Bill of Rights includes a definition for a quorum. Mr. Lisman responded that it does.

Representative Weiss asked if Mr. Lisman thought many other states would be adopting this Bill of Rights. Mr. Lisman said he does and the problem with the uniform laws is that they are long and complicated and this is shorter and easier because it has only 24 Sections.

Representative Weiss asked why North Carolina should adopt this and who would likely oppose it. Mr. Lisman said managers and professional managers who will see this as a limit on their authority.

Representative Cleveland said some do not agree with this entirely because some of it is not a solution to the problems the State is experiencing and requested the Bill of Rights to be sent to the committee in its' entirety.

Representative Heagarty asked in areas where Article 5 was rejected, what do they do? Mr. Lisman they rely on the disclosure and the private enforcement.

Representative McGee thanked Mr. Lisman for his presentation and commented that these meetings were run similarly to the way a mayor runs a meeting or a town hall meeting. He also said Representative Jones had previously put in a bill to require towns and counties to give the public the opportunity to speak before each meeting and legislation should be in place to allow condominium owners to speak.

Representative McGee introduced Mr. Bob Leker, the Program Manager for the State Energy Office at the North Carolina Department of Commerce to address the committee concerning issues related to Solar Access Law-Senate Bill 670, Session Law 2007-279 (see attachments 4 & 5). Mr. Leker thanked those at the North Carolina Solar Center for their assistance in preparing his report.

Representative Howard asked about Solar Access issues. Mr. Leker responded that the model ordinance that he spoke about has both solar access legislation and a solar rights ordinance. Some states have a law that allows solar windows that cannot be blocked and he referenced "A Comprehensive Review of Solar Access Law in the United States (October 2008).

Representative Weiss commented that the work of this committee was to see how other states are empowering homeowners to have solar panels on their own homes.

Representative Howard commented with a higher density and taller buildings being built, this could become an issue in the future.

Representative Cleveland commented that concerns from his constituents are related to homeowners associations and not solar issues and if the solar access law that was passed in 2007 needed amending that could be done.

Representative Heagarty agreed with Representative Cleveland in part that the 2007 law does address this issue but that it is the charge of the committee to take it up if necessary. He further stated that his concern was related more to personal property rights.

Representative Earle asked if a committee report would be prepared for the Short Session or would the committee continue to meet after the end of Session. Representative McGee responded that no substantive legislation would be prepared for Short Session unless there are some minor changes that can be made.

Representative Weiss said she felt that a lot of information has come before the committee and there will be an interim report to summarize the work that was accomplished by the committee up to this point and does not expect to have a large bill ready for Session. She added that the Chairs will be talking with the committee members if tweaks are needed in the law and the committee will provide good recommendations for the Long Session.

Representative Earle commented that with all of the constituent correspondence her office has received, she would like to see something produced to address the current rules and the violations taking place.

Representative Weiss said she appreciated the good presentations and questions and understood that all the members have had numerous contacts with people in their districts over this issue and the committee will continue to move forward.

Representative McGee thanked everyone for their participation and added if anyone had any ideas for the Chairs to contact them before the next meeting which will be on April 14th. Representative McGee adjourned the meeting at 2:50 pm.

Representative William C. McGee,
Cochairman

Jayne A. Nelson,
Legislative Assistant

3-31-10 ATT # 1

Lamar

Uniform Common Interest Owners Bill of Rights Act

- A Summary –

The Uniform Law Commission (ULC) promulgated the original version of the Uniform Common Interest Ownership Act in 1982. UCIOA succeeded and subsumed several older ULC acts, including the Uniform Condominium Act (1977 and 1980 versions), the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. UCIOA is a comprehensive act that governs the formation, management, and termination of common interest communities, whether that community is a condominium, planned community, or real estate cooperative. In 1994, the ULC promulgated a series of amendments to UCIOA. The 1994 amendments did not change the general structure or format of the original act, but were designed to reflect the experience of those states that had adopted UCIOA (or one or more of its predecessor acts), and scholarly commentary and analyses surrounding the act.

In 2004, the ULC approved a new drafting committee to consider and promulgate further amendments to UCIOA. At its Annual Meeting in 2008, the ULC promulgated the amendments to UCIOA, along with a new Common Interest Owners Bill of Rights Act (UCIOBORA).

UCIOBORA was drafted so that it can be enacted by states as a stand-alone act when it is not feasible to enact all of UCIOA. The UCIOBORA is drawn from the provisions of UCIOA, and supplements existing state law with many of the most important updates and protections of the 2008 updates.

The UCIOBORA sections, as they correspond to 2008 UCIOA, are:

UCIOBORA Section	Corresponding UCIOA Section*	Section Topic
Section 1	Section 1-101	Short Title (Adds Bill of Rights)
Section 2	Section 1-103	Definitions
Section 3	Section 1-104	No Variation By Agreement
Section 4	Section 1-113	Obligation of Good Faith
Section 5	Section 1-201	Applicability to New Common Interest Communities; Effect of Amendments
Section 6	Section 1-205, 1-206	Applicability to Pre-Existing Common Interest Communities
Section 7	Section 1-209, 1-210	Exempt Real Estate Arrangements
Section 8	Section 3-102	Powers and Duties of Unit Owners Associations
Section 9	Section 3-103(a) and (b), 3-101	Executive Board Members and Officers
Section 10	Section 3-106	Bylaws
Section 11	Section 3-108(a)	Unit Owner Meetings
Section 12	Section 3-108(b)	Meetings of Executive Board and Committees
Section 13	Section 3-109	Quorum
Section 14	Section 3-110	Voting; Proxies; Ballot
Section 15	Section 3-116(n)	Limitation on Foreclosure
Section 16	Section 3-118	Association Records
Section 17	Section 3-120	Rules
Section 18	Section 3-121	Notice to Unit Owners
Section 19	Section 3-122	Removal of Officers and Directors
Section 20	Section 3-123	Adoption of Budgets; Special Assessments
Section 21	Section 4-117, 1-114	Effect of Violation on Rights of Action; Attorney's Fees
Section 22	Section 1-108	Supplemental General Principles of Law; Conflicts

Section 23, 24, 25	Section 1-110, 1-116, 4-121	Uniformity of Application, Relation to ESIGN, and Effective Date

***NOTE: Not all sections of UCIOBORA are drawn identically from 2008 UCIOA, and each section should be examined carefully and in light of the official comments for each act.**

Highlights of the new UCIOBORA include:

- Includes new key definition, such as "common interest community" and "record."

- The new act applies to all common interest communities in the state, whether or not existing prior to enactment of UCIOBORA in a state. However, because of concerns that the statute not be construed as impairing contracts, not all sections apply to all pre-act communities.

- Powers and duties of a unit owners association and the executive board are outlined. Treatment of association bylaws, rulemaking, operation and governance, notice methods, unit owners and board meetings, and meeting and voting procedures are also provided, as are governing provisions for the adoption of budgets and special assessments.

- UCIOBORA encompasses the authority to discipline unit owners, within limits, for failure to pay assessments, and the executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise on such. The right of an association to proceed in foreclosure on a lien against a unit owner is revised and limited, and the act provides priority for the application of delinquent sums.

- Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.

- Procedures are provided for the removal of officers and directors of an association, along with certain protections for declarant-appointed directors. Removal procedures must be posted as part of the meeting notice, and the affected director or officer must have the opportunity to be heard.

Both the 2008 UCIOA amendments and UCIOBORA seek to address critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, and treatment of records. There are a significant number of other amendments, style and substantive, to clarify and modernize the operation, and governance of common interest associations. The new acts will better serve those governed by their provisions, and should be considered in every state.

3-31-10 AH #2

Lieman

UNIFORM COMMON INTEREST OWNERSHIP ACT (2008)

- A Summary -

The Uniform Law Commission (ULC) promulgated the original version of the Uniform Common Interest Ownership Act in 1982. UCIOA succeeded and subsumed several older ULC acts, including the Uniform Condominium Act (1977 and 1980 versions), the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. UCIOA is a comprehensive act that governs the formation, management, and termination of common interest communities, whether that community is a condominium, planned community, or real estate cooperative.

In 1994, the ULC promulgated a series of amendments to UCIOA. The 1994 amendments did not change the general structure or format of the original act, but were designed to reflect the experience of those states that had adopted UCIOA (or one or more of its predecessor acts), and scholarly commentary and analyses surrounding the act. Issues addressed by the 1994 act included: increasing declarant responsibility for large and non-residential projects; allowing subdivision and expansion of projects; improving procedures for addressing use and occupancy restrictions in units; easing the process for projects begun in states prior to the adoption of UCIOA to opt in to the act; empowering the association to deal with tenants in rented units; and clarifying the standard of care that applied to association directors.

In 2004, the ULC approved a new drafting committee to consider and promulgate further amendments to UCIOA. The primary purpose of the proposed amendments was to address a growing demand in the states for a legislative solution for growing tensions between the elected directors of unit owners' associations and dissident individual unit owners within those associations. In keeping with the aims of the 1982 and 1994 versions of the act, the new amendments also reflect a comprehensive review of states' experience with UCIOA and its predecessor acts over the last 30 years.

The ULC approved these amendments at its Annual Meeting in 2008. They incorporate non-substantive, style changes to update the act and harmonize it with state legislative developments and terminology changes. The 2008 UCIOA amendments also incorporate a considerable number of substantive amendments, including the following highlights:

- Among new general provisions, the definition of "common interest community" is revised to confirm that unit owners' mutual obligations to share the costs of services provided by the association is sufficient, without more, to create a common interest community. However, by reference to sections 1-209 and 1-210, the definition confirms that cost-sharing agreements between two associations, or an association and a separate owner of real estate, do not require creation of a separate common interest community. The term "special declarant right" adds new rights granted to a declarant. Several new definitions are added, including treatment of the term "record" as a noun for e-signature purposes, and the new act includes standard language on interaction with the federal Electronic Signatures in Global and National Commerce Act (ESIGN).

- Selected 2008 amendments are made retroactive to all residential common interest communities created before adoption of UCIOA in a particular state; these include sections 1-206 (governing instruments for older projects), 2-102 (unit boundaries), 2-117(h) and (i) (amendment to declaration), 2-124 (termination following catastrophe), 3-103 (executive board members and officers), 3-108 (meetings) and 3-124 (litigation involving the declarant). The amendments also grant greater flexibility to nonresidential projects by allowing the declaration to provide that only Articles 1 and 2 of UCIOA (definitions and general provisions, development flexibility, and title safeguards) apply.

- The 2008 amendments revise UCIOA's treatment of the creation, alteration, and termination of common interest communities. Declarations are now required to authorize a process for association administration of any design criteria and building approval process, or for the enforcement of aesthetic standards; those that

fail to do so will not have the authority to enforce such requirements. Also, the declaration may restrict unit owners' use of common elements, in addition to existing restrictions on limited common elements, and common elements may now be restricted to use for "the purposes for which they were intended."

• Residential projects may now benefit from increased flexibility in the percentage of unit owners required to amend the declaration. Now, consent may be presumed from lenders, where lender consent is necessary for amendment, with proper notice and 60 days of silence. The amendments also clarify that special declarant rights reserved in the declaration may not be amended without consent of the beneficiary.

• The 2008 amendments expand UCIOA's treatment of association bylaws, rulemaking, operation and governance, notice methods, meetings, meeting and voting procedures, and the adoption of budgets and special assessments. The Act adopts important 'open meeting' requirements for both unit owner and executive board meetings, and greatly limits the use of executive sessions. The changes made by the 2008 amendments mandate that each unit owners association have an executive board, and expand the forms that unit owners associations may organize as, to include limited liability companies or any other form permitted by state law. The declaration may provide for direct election of the association's executive board officers by unit owners, and also allows the declaration to provide for a limited number of independent outside directors, apart from those elected by unit owners or appointed by the declarant.

• Mandatory and discretionary association actions are clarified, as are certain rules regarding investment and borrowing practice, and an association's right to suspend a unit owner's privileges (within limitations) is confirmed. The executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise them. The association is given greater flexibility to seek payment of the costs for damage resulting from willful misconduct or gross negligence directly from a unit owner instead of filing a claim with the association's insurer. The status of an association's statutory lien for all sums due from unit owners is clarified, and the right of an association to proceed in foreclosure on a lien against a unit owner is significantly limited.

• Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.

• Liability is expanded for declarants for false or misleading statements made in public offering statements, and increased financial disclosures are required. Minor changes are made with regard to express warranties of quality, allowing a model or description to clearly state that it is only "proposed" or "subject to change."

In addition to the 2008 amendments to UCIOA, a new **Uniform Common Interest Owners Bill Of Rights Act (UCIOBORA)** was also drafted that draws together a number of the existing provisions of UCIOA as well as many of the 2008 amendments that, together, provide significant rights to unit owners in all common interest communities. UCIOBORA can be enacted by states as a stand-alone act when it is deemed not feasible to adopt all of UCIOA. The UCIOBORA would then supplement existing state law with many of the most important updates and protections of the 2008 act.

The 2008 UCIOA amendments seek to address critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, and treatment of records. There are a significant number of other amendments, style and substantive, to clarify and modernize the operation, and governance of common interest associations. Taken as a whole, the aggregate of these amendments is a stronger UCIOA that better serves those governed by the act's provisions. It should be considered in every jurisdiction that has not already adopted it in the United States.

Lisman

3-31-10 ATT # 3

Carl H. Lisman, Esq
Burlington, VT 05401

UCIOA & The Bill of Rights

...definitions and terms

- condominium
- planned community
- cooperative

...a little history

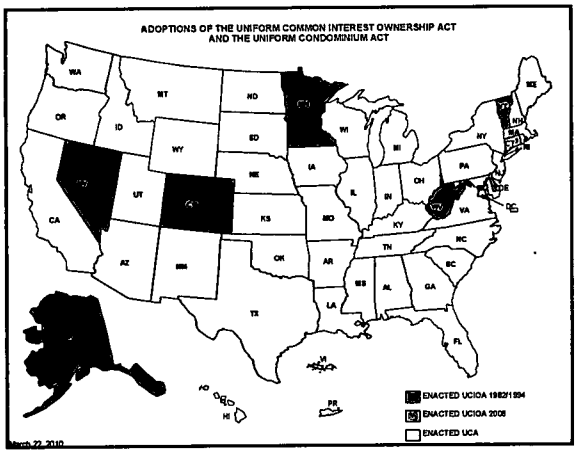
1976 Uniform Condominium Act
1980 Uniform Planned Community Act
Revisions to UCA
1981 Model Real Estate Cooperative Act
1982 Uniform Common Interest Ownership Act
1994 Revisions to UCIOA
2008 Revised UCIOA and UCIOBORA

Structure of the Acts

- Article 1 – Definitions, General Provisions
- Article 2 – Creation, Amendment ,Termination
- Article 3 – Operation of the Association
- Article 4 – Protections of Purchasers
- Article 5 – Government Registration

Underlying Philosophies

- Disclosure and Private Enforcement
- Reliance on Default Rules



The Problems

- [illegible] of structure on the life of an association
- [illegible] board meeting
- [illegible] access to association records
- [illegible] association elections
- [illegible] enforcement
- [illegible] foreclosures
- [illegible] autonomy and privacy in the home
- [illegible] forms of notice

The solution

- The absence of structure in the life of an association
  - Mandating the form of the business entity
  - There must be a board
  - Fiduciary standards common to all forms of the entity
  - There must be bylaws
  - Mandatory annual meeting of members
  - Mandatory board meetings

The solution

- Opaqueness in board meetings
  - Open to members
  - Opportunity to be heard
  - Action only on agenda items
  - Distribution of board materials
  - Limits on executive sessions
    - Limited purposes
    - No action to be taken



The solution

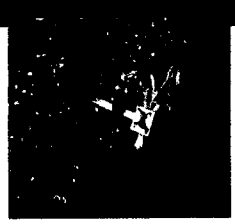
- No meaningful access to association records
  - Listing of what must be kept
  - Listing of what must be available
  - Reasonable limits on access



The solution

- Unfairness in association elections
  - Opportunity to be a candidate
  - Nonpayment of assessments not a disqualifier
  - Proxy rules
  - Action by ballot
  - Electronic voting

The solution



- Rules – adoption, enforcement
  - Notice and opportunity to be heard
  - Reasonableness

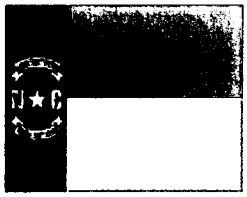
The solution



- Abusive foreclosures
  - Assessments vs other amounts due
  - Opportunity to cure, payment plan

The solution

- Lack of autonomy and privacy in the home



Other Issues

- Non-owner board members
- Reserve accounts
- Specific design review authority

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-279
SENATE BILL 670

AN ACT TO PROVIDE THAT CITY ORDINANCES, COUNTY ORDINANCES, AND DEED RESTRICTIONS, COVENANTS, AND OTHER SIMILAR AGREEMENTS CANNOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING THE INSTALLATION OF SOLAR COLLECTORS NOT FACING PUBLIC ACCESS OR COMMON AREAS ON DETACHED SINGLE-FAMILY RESIDENCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-201. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no city ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence, and no person shall be denied permission by a city to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a detached single-family residence.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-144. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no county ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence. No person shall be denied permission by a county to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a detached single-family residence.

This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 3. Chapter 22B of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Deed Restrictions, Covenants, and Other Agreements Prohibiting Solar Collectors.

"**§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

(a) The intent of the General Assembly is to protect the public health, safety, and welfare by encouraging the development and use of solar resources and by prohibiting deed restrictions, covenants, and other similar agreements that could have the ultimate effect of driving the costs of owning and maintaining a residence beyond the financial means of most owners.

(b) Except as provided in subsection (d) of this section, any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a detached single-family residence on land subject to the deed restriction, covenant, or agreement is void and unenforceable.

(c) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would regulate the location or screening of solar collectors as described in subsection (b) of this section, provided the deed restriction, covenant, or similar binding agreement does not have the effect of preventing the reasonable use of a solar collector for a detached single-family residence.

(d) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit the location of solar collectors as described in subsection (b) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(e) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 4. This act becomes effective October 1, 2007. Section 3 of this act applies to deed restrictions, covenants, or similar binding agreements that run with the land recorded on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:12 p.m. this 27th day of July, 2007

3-31-10 ATT #5

Leker

NORTH CAROLINA
Department of Commerce

MEMORANDUM

TO: Jennifer McGinnis, House Select Committee on Homeowners Associations
CC: Rita Harris, Ward Lenz, John Morrison, Larry Shirley, Richard Self
FROM: Bob Leker, Program Manager, State Energy Office, NC Department of Commerce
DATE: March 31, 2010
SUBJECT: Background and Options to address issues related to Solar Access Law – Senate Bill 670, Session Law 2007-279

Issue. Issues related to the above reference NC Law that attempts to prohibit ordinances, regulations, covenants, and other restrictions to the placement of solar technology. Identify possible changes to modify legislation giving residents more ability to install solar technology.

Need/Background. A range of new and/or modified government incentives and local programs have increased demand for installing solar technology. Specific examples include:

- A federal tax credit of 30% with no capped maximum for solar water heating or solar electric systems
- A state tax credit of 35% for renewable technologies including solar (caps depend on technology)
- Senate Bill 3 established a set aside program requiring NC utilities to generate a small portion of their portfolio from solar electric generation. In addition, NC offers property tax reductions for solar equipment.
- Local utilities including Progress Energy, Blue Ridge EMC, Brunswick EMC, Piedmont EMC, South River EMC, and City of High Point Electric offer incentives for solar energy.

Solar water heating systems can commonly supply 60 – 80% of the hot water needs in a home. Solar electric systems can typically supply 25% of homes' electricity needs. A comprehensive listing of the various renewable energy and energy efficiency incentives and policies can be found at the following website http://www.dsireusa.org/incentives/index.cfm?CurrentPageID=1&State=NC&RE=1&EE=1 It should also be noted that there is significant interest from the commercial sector and new businesses are being established to sell, install, and service solar energy system. NC is now ranked 12th in the nation in solar installations as listed in the DOE Energy Information Administration website.

Session Law 2007-279 Concerns. This solar access legislation was intended to prevent HOAs and local governments from prohibiting solar installations. However sections of the legislation allow HOAs (as well as local governments) to prohibit solar energy systems if they are visible. Specifically, Article 3 of the legislation allows solar restrictions in deeds if the solar energy system is visible from a roof slope, from a facade, or from the side of a property facing a public access way. Because of these provisions regarding visibility from a public access, it is conceivable that most solar installations could very easily be prohibited. (It is interesting to note that I have not heard any instances of problems with siting solar energy systems from the perspective of a local government). In many cases solar energy systems look similar to skylights and integrate well with roof areas. Another point of concern is that

the current NC solar access law does not affect any restrictions that may have been enacted prior to July 2007 when the first version was passed. The 2007 legislation can be found at http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/HTML/S670v5.html

Possible Solutions. One recommendation is to remove the visibility clause that the current NC uses that allows HOAs to restrict or refuse installation of solar collector systems. Other points that have been suggested or that are contained in existing solar access legislation from other states include: making the solar access law effective back to a certain date so more people are covered; limiting HOAs ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; and limiting required modifications (for aesthetics) that reduce the operating efficiency of the system. Additional information about solar access laws around the country can be found at the following website. http://www.dsireusa.org/solar/solarpolicyguide/?id=19

The following are excerpts of solar access legislation from states that have addressed solar access with success.

Hawaiii

§196-7 Placement of solar energy devices.

(a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void and unenforceable.

(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices. The rules shall facilitate the placement of solar energy devices and shall not unduly or unreasonably restrict that placement so as to render the device more than twenty-five per cent less efficient or to increase the cost of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees for the placement of any solar energy device.

http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0196/HRS_0196-0007.htm

Nevada

NRS 111.239 Prohibition or restriction on use of system for obtaining solar energy on property.

1. Any covenant, restriction or condition contained in a deed, contract or other legal instrument which affects the transfer or sale of, or any other interest in, real property and which prohibits or unreasonably restricts or has the effect of prohibiting or unreasonably restricting the owner of the property from using a system for obtaining solar energy on his or her property is void and unenforceable.

2. For the purposes of this section, the following shall be deemed to be unreasonable restrictions:

(a) The placing of a restriction or requirement on the use of a system for obtaining solar energy which decreases the efficiency or performance of the system by more than 10 percent of the amount that was originally specified for the system, as determined by the Director of the

Office of Energy, and which does not allow for the use of an alternative system at a substantially comparable cost and with substantially comparable efficiency and performance.

(b) The prohibition of a system for obtaining solar energy that uses components painted with black solar glazing.

http://www.leg.state.nv.us/NRS/NRS-111.html#NRS111Sec239

Arizona

33-1816. Solar energy devices; reasonable restrictions; fees and costs

A. Notwithstanding any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device as defined in section 44-1761.

B. An association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device.

http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/33/01816.htm&Title=33&DocType=ARS

In addition, a guide has been published entitled "A Comprehensive Review of Solar Access Law in the United States (Oct 2008)". This complete guide can be found at http://www.solarabcs.org/solaraccess/ The review has a nice discussion of various approaches to solar access and does include a model state level statute encouraging solar access. Below is an excerpt from the model ordinance section on Solar Rights. There is another section that deals with Solar Easements (rules that provide for a property to maintain access to sunlight).

Section 3. Solar Rights

(Massachusetts model, others to consider: Hawaii and Wisconsin)

Solar energy systems; installation or use; restrictive provisions. Any provision in an instrument relative to the ownership or use of real property which purports to forbid or unreasonably restrict the installation or use of a solar energy system or the building of structures that facilitate the collection of solar energy shall be void. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors' installation or maintenance costs by an amount which is estimated to be greater than 10 percent of the total cost of the initial installation of the solar collectors, including the costs of labor and equipment. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with such rules inhibits the solar collectors from functioning at their intended maximum efficiency. The [Agency] shall enforce the provisions of this law in accordance with the authority granted under [section x].

Research note: Staff at the NC Solar Center that work on the DSIRE program (database of state incentives for renewables and efficiency) including Brian Lips – maintain an excellent reference website useful for understanding and researching various incentives at the state, federal, and local level.

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS 3-31-10

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cady Thomas	NCAR
Jim Laumann	HOA-NC.com
Hope Carmichael	Raleigh NC
John Lawton	CAI-LAC Raleigh NC
Howard Rippetoe	VNH-Rippetoe Assoc. PC hrippetoe@vanmoterharvey.com
Henry Jones	Attorney - Raleigh
John Bowdish	Lead Mini Lake HOA
Michael Shiflett	CAI Board of Trustees, National Interneighborhood Council of Durham

VISITOR REGISTRATION SHEET

COMMITTEE ON HOMEOWNERS ASSOCIATIONS 3-31-10

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Mooney	Land Arc-115 Allforth Cary NC, 27519
DIANA STARLING	RALEIGH, NC HOMEOWNER
Ole Hadsen	Holden Beach, NC VP BOD
Carley Ruff	NC Housing Coalition
Alex Bidot	NC Housing Coalition
Jessica Parker	NC Housing Coalition
Chris Killa	CHL
Al Ripley	NC JC
Jim Laughlin	Attorney
Lou DeVita	SUNSET BEACH N C
FRANK WILDMON	SUNSET BEACH, NC
Will Hardman	Sunset Beach, NC

VISITOR REGISTRATION SHEET

Comm. on Homeowners Associations — 3/31/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Mangum	

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH 27603

MEMORANDUM

April 7, 2010

TIME CHANGE

TO: Members of the House Select Committee on Homeowners Associations

FROM: Representative Jennifer Weiss
Representative William C. McGee

SUBJECT: **TIME CHANGE** - House Select Committee on Homeowners Associations Meeting

There will be a meeting of the House Select Committee on Homeowners Associations:

DAY:	Wednesday	TIME:	12:30 pm
DATE:	April 14, 2010		
LOCATION:	Legislative Office Building, Room 421		

Committee members, please advise Jayne Nelson, Committee Assistant, at 919-733-5747, or e-mail mcgeela@ncleg.net if you are unable to attend.

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

AGENDA

April 14, 2010
12:30 p.m.
Room 421 LOB

I. Introduction

Representative Jennifer Weiss, Co-Chair
Representative William McGee, Co-Chair

II. Committee Discussion of Interim Report, Including Potential Findings and Recommendations

III. Adjourn

House Select Committee on Homeowners Associations Meeting

April 14, 2010
12:30 pm

The House Select Committee on Homeowners Associations met on Wednesday April 14, 2010 at 12:30 pm in the Legislative Office Building in room 421 to hold a meeting on issues concerning homeowners associations. The following members were present: Co-chairman Weiss (presiding), Co-chairman McGee, Representatives Howard, Cleveland, Earle, Heagarty and Wray. For visitors in attendance see the attached Visitor Attendance Sheet.

Representative Weiss called the meeting to order and thanked the sergeant-at-arms and staff and took a moment of personal privilege to recognize Susan Doty's retirement and her years of dedicated service as her legislative assistant.

Representative Weiss then introduced Ms. Karen Cochrane-Brown, staff counsel, to explain the proposed interim report that summarized the five previous meetings and made recommendations to use the findings to move forward with the committee after Short Session (see attachment 1).

Representative Weiss opened the floor to questions from the committee members.

Representative Cleveland commented that he thought the Office of the Attorney General should play a bigger role in settling the disputes regarding board accountability rather than advising to hire an attorney. He further stated that if they would intervene and enforce the statutes, most cases could be resolved without having to go to court.

Representative Weiss referred to Finding 2 regarding State Agencies and asked if he was comfortable with the language "state agencies".

Representative Cleveland stated that under State Agencies it should specify the Office of the Attorney General to advise and then notify an offending party if necessary.

Representative Weiss asked if the committee was in agreement, and Representative Heagarty agreed that the Office of the Attorney General should be more involved in handling complaints, making citizens more aware of the law and advising if their complaint is valid.

Representative Earle stated that a state agency needs to enforce the statutes.

Representative Weiss asked Ms. Cochrane-Brown if any other agencies would be suitable to handle these cases. Ms. Cochrane-Brown responded that the Real Estate Commission or the Office of the Secretary of State could also be considered.

Ms. Walston added that those state agencies are assessed billable hours when someone from the Office of the Attorney General represents them.

Representative Weiss suggested including the Office of the Attorney General and other state agencies in the language. Representative McGee agreed.

Representative Earle stated that good work was done but the committee needs to meet after the Short Session to continue forward.

Representative Weiss said that she thought the committee was comfortable with adding changes that Representative Cleveland suggested and asked for further comments from the committee regarding the findings and recommendations.

Representative Heagarty suggested studying the problems associated with absentee owners.

Representative McGee asked Ms. Cochrane-Brown for an example of language to make the changes to finding 2. Ms. Cochrane-Brown responded to add the language: "these suggestions include designating the Attorney General's Office or other appropriate state agencies to enforce the statute."

Representative Weiss responded to Representative Heagarty's previous comment regarding absentee owners that there are tools under the law. Homeowners can use foreclosure to collect unpaid fees and one suggestion from Mr. Lisman at the last meeting is to allow foreclosure when dues are not paid and to limit foreclosure to dues.

Representative Cleveland commented that part of the problem facing the homeowners is that they still believe they have the same property rights as others, but they gave those up outside of their interior walls when they joined a group and the committee should work on how to make sure that communications are clear between the homeowners and the homeowner associations. Also, he said authority should not be taken from either but should be handled equally and to solidify and codify the solutions.

Representative Heagarty pointed out that in Finding 7 regarding clarifying the solar access law, clarification is necessary because of federal and utility company tax credits that are temporary incentives with the federal stimulus.

It was decided by the committee that his suggestion would be better taken up after the short session due to time constraints.

Representative Earle offered a motion to adopt the draft report with the changes made and technical corrections. Representative Howard seconded the motion.

Representative McGee supported the motion due to the complexity of the issues surrounding homeowners associations and suggested a continuation of meetings after the Short Session to finalize what is to be presented at the Long Session.

Representative Weiss called for a vote. The motion carried.

Representative Weiss in closing, invited the audience to approach the Chairs after the meeting if they had information regarding the committee work to share, and further stated that a lot of work would have to be done before the Long Session concerning the laws and the model language that has been recommended to correct some gaps in the law, and to keep in contact with the Chairs and committee members during the Short Session.

Representative Weiss thanked the staff and committee members and adjourned the meeting at 1:03 pm.

Jennifer Weiss

Representative Jennifer Weiss,
Cochair

Jayne A. Nelson

Jayne A. Nelson,
Legislative Assistant

4-14-10 ATTACHMENT 1

House Select Committee on Homeowners Associations
Summary of Committee Proceedings and Proposed Findings

Committee Proceedings

The House Select Committee on Homeowners Associations was established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representative of the 2009 General Assembly. The Committee consists of the following seven members: Rep. Jennifer Weiss (Co-Chair), Rep. Bill McGee (Co-Chair), Rep. George Cleveland, Rep. Beverly Earle, Rep. Chris Heagarty, Rep. Julia Howard, and Rep. Michael Wray.

The charge of the Committee is to study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. The Committee may also study any other relevant issue that it deems appropriate. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, and shall submit a final report to the members of the House of Representatives on or before February 1, 2011.

The Committee met five times after the adjournment of the 2009 Regular Session of the 2009 General Assembly on August 11, 2209. The Committee also held a public hearing on February 2, 2010,

January 13, 2010 Meeting

At the initial meeting of the Committee staff read the Charge to the Committee and gave an overview of the current law regarding North Carolina's Condominium Act and Planned Community Act. Recent changes to these Acts were also discussed. Legislation enacted by the General Assembly in 2005 was geared toward providing additional safeguards and protections for homeowners. These changes included the following:

- Limiting the use of foreclosure by power of sale if the debt securing the lien on a homeowner's lot consisted solely of fines imposed by the homeowners association (HOA).
- Limiting the payment of attorneys' fees and court costs when there is an overdue assessment on a homeowner's property.
- Expanding the duties of the HOA to make available to the homeowners the HOA's books and records.
- Restricting the ability of covenants to regulate the display of a U.S. or North Carolina flag and the display of political signs.

In 2009, the following legislation was enacted:

- Added language to insure that homeowners receive notice of a filing of the claim of lien prior to institution of foreclosure proceedings.

- Clarified that any new restrictive covenants, created on or after December 1, 2009, would be invalidated if these covenants would prohibit the installation of solar collector devices in planned communities and condominium communities. Legislation limiting the regulation of solar collectors was enacted in 2007.

The Committee then discussed future meeting dates.

February 2, 2010 Public Hearing

The Committee heard from approximately 35 speakers. The comments ranged from providing more disclosure for homeowners, alleviating problems with abuse of power by board members when enforcing restrictive covenants, limiting foreclosure on delinquent assessments, and maintaining current foreclosure law.

February 16, 2009 Meeting

The Committee heard from Bob Leker, Renewables Program Manager in the State Energy Office of the North Carolina Department of Commerce. Mr. Leker discussed issues related to the limitations on regulating solar collectors, specifically as it relates to limiting solar collectors on the basis of visibility.

Peter E. Powell, Legal Counsel to the North Carolina Administrative Office of the Courts, presented comments regarding the need for legislation to prevent defects in title, questionable procedures, and abuses and overcharges in HOA lien foreclosures. He emphasized that there are protections for homeowners facing foreclosure of deeds of trusts, but no parallel protections for HOA foreclosures. Mr. Powell's comments are attached.

Phil Telfer, Special Deputy Attorney General, with the Consumer Protection Division of the North Carolina Department of Justice discussed the HOA complaints handled by the Division. He indicated that there were approximately 38 written complaints in 2009 and that the Division receives approximately 100 calls per year. Most of these calls relate to services offered by HOAs; fees charged, billing practices, and recordkeeping of HOAs; and foreclosures by HOAs. Mr. Telfer indicated that the most benefit that the Division can offer is education prior to purchase of a lot.

March 4, 2010 Meeting

The Committee heard remarks from Mariam Baer, Legal Counsel and Assistant Director, of the Legal Services Division within the North Carolina Real Estate Commission. Ms. Baer commented on citizen inquiries and complaints to the Commission regarding HOAs, the Commission's jurisdiction in responding to complaints, and the real estate broker's duties with regard to disclosing to consumers the existence of HOAs and restrictive covenants. A copy of Ms. Baer's comments are attached.

Rob Baer, President of the North Carolina Chapter of the Community Associations Institute (CAI) spoke on the role of the CAI to provide the latest information on community association management and governance to volunteer HOA boards. Mr. Baer indicated that the CAI advocated for legislative and regulatory policies that support

responsible governance and effective management. A copy of Mr. Baer's comments are attached.

Al, Ripley, Director of the Consumer Action Network at the North Carolina Justice Center, discussed certain minimum protections for homeowners that the Committee should consider. A copy of his recommendations is attached.

March 31, 2010 Meeting

The Committee was given an overview of the Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act by Carl, H. Lisman, an attorney and Commissioner with the National Conference of Commissions on Uniform State Laws. Mr. Lisman discussed the Acts and how they compare to North Carolina's Planned Community and Condominium Acts. A copy of Mr. Lisman's comments is attached.

Bob Leker, Renewables Program Manger in the State Energy Office of the North Carolina Department of Commerce, was asked to speak again to the Committee regarding concerns about the visibility restrictions on the installation of solar panels. Mr. Leker discussed possible solutions and gave examples of how other states have addressed this issue. Mr. Leker's comments are attached.

Proposed Committee Findings

FINDING 1: Demographics
Issues associated with homeowners associations can reasonably be expected to increase rather than decrease as the number of associations operating in the State grows along with population.

With regard to current statistics, there is no mandatory registry of homeowners associations and as such an exhaustive list of associations does not exist. According to Homeowners Associations of North Carolina, however, there are over 17,326 homeowner associations in North Carolina collectively representing over 2,025,000 households or 53% of the owner occupied households in the State. [1]

In recent years, North Carolina's population has grown rapidly. Estimates prepared by the U.S. Census Bureau show that between 2000 and 2005, the State had the ninth-highest growth rate (7.88 percent) among the fifty states and the District of Columbia, reaching a population of 8,683,242. Projections of population growth between 2000 and 2030 prepared by the State demographer indicate that the State total population is expected to reach about 12 million by 2030. The U.S. Census Bureau has projected that North Carolina will become the seventh most populous state by 2030, with more than 12.2 million residents. This move up from the current eleventh place is expected to happen as the State passes New Jersey, Michigan, Ohio, and Georgia in total population.[2]

As robust growth in the State's population continues to occur over the next two decades, corresponding growth in housing construction and the number of homeowners associations is likely to dovetail.

FINDING 2: Board Accountability.

The Committee finds that there is a need to provide homeowners with better recourse when seeking to challenge actions by the Board of Directors.

The most common complaint expressed by homeowners both at the public hearing and by correspondence is the lack of an easily accessible and affordable method for homeowners to challenge the actions of the Board of Directors. The Committee received numerous reports from individuals describing flagrant violations of the statute and/or bylaws of the association. These complaints dealt with issues such as failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when

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[1] See http://www.hoa-nc.com/About.aspx

[2] See http://www.ncmuseumofhistory.org/collateral/articles/S06.recent.population.change.pdf. Data from article entitled "Recent Population Change in North Carolina" by Dr. Alfred W. Stuart from *Tar Heel Junior Historian* 45:2 (spring 2006).

requested, unauthorized use of association funds, and arbitrary enforcement of covenants. However, the only recourse currently available to homeowners in most cases is to commence a civil action. This option is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense.

Several homeowners suggested that there should be a less costly method of enforcing the statute and resolving disputes with the Board. These suggestions included designating a State agency to enforce the statute, or authorizing mandatory mediation or other methods of alternative dispute resolution.

FINDING 3: Disclosure.

The Committee finds that there is a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property

Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding by the homeowners at the time they purchased their homes of the existence of restrictive covenants applicable to real property located in planned communities.

It does not appear that present disclosure practices are adequate in notifying prospective purchasers of the nature of the restrictions upon the real property. Sellers of homes in planned communities are in the best position to provide this information to prospective purchasers. G.S. 47E-4 requires that sellers of residential real property furnish to purchasers a residential property disclosure statement, and requires the Real Estate Commission to develop a standard disclosure statement that must include, among other things, "the zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property. The current disclosure statement requires disclosure of "violations of zoning ordinances, restrictive covenants or other land-use restrictions or building codes" but does not require sellers to disclose the existence of restrictive covenants if there are no violations Sellers should be required to disclose the existence of any restrictive covenants affecting the use of the real property, and to furnish a copy of all such restrictive covenants to prospective purchasers The most efficient way to accomplish the needed disclosure appears to be for the Real Estate Commission to amend the disclosure form to include these requirements Such amendment would be within the scope of the present statutory authority granted to the Commission pursuant to G.S. 47E-4. The Committee is informed that the Real Estate Commission is prepared to initiate a rulemaking proceeding for the purpose of implementing revisions to the disclosure statement as recommended by the Committee.

FINDING 4: Declarant Transfer Issues.

The Committee finds that the law should be clarified with regard to the obligations of the declarant.

Unlike the Condominium Act, the Planned Community Act does not limit the time period during which the declarant (developer) may maintain control of the association. Several homeowners related cases of abuses by the declarant including refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems.

FINDING 5: Consumer Protection.
The Committee finds that there is a need for additional consumer protections to better protect homeowners from abusive homeowner association practices.

Several homeowners complained that the law gives homeowners few rights to challenge the actions of the association's Board. The board can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of the association, cause additional improvements to be made as part of the common elements, and impose fees and fines. Homeowner's have complained that these and other actions are often taken without giving notice or an opportunity to vote on such issues to homeowners.

In addition, there have been many complaints about unreasonable actions by the Board, such as arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, and abuse of the foreclosure process.

FINDING 6: Foreclosure Issues.
The Committee finds that although the Planned Community Act authorizes the use of foreclosure proceedings to satisfy homeowner association liens, the foreclosure statute was never intended for this purpose and there are a number of incongruities between the statutes. This issue was raised by the legal counsel to the Administrative Office of the Courts.
In addition, the law authorizes "power of sale foreclosure" to recover unpaid assessments and "judicial foreclosure" to recover unpaid fines and fees. Several individuals suggested that the statute should be amended to prohibit or limit the use of foreclosure in all or some cases.

FINDING 7: Clarification of the Solar Access Law.
The Committee heard from the State Energy Office and a few homeowners that there is some confusion with regard to the law that invalidates any new restrictive covenants which prohibit the installation of solar collector devices. The law contains an exception if the solar device is visible from a roof slope or façade or if it faces a public access way. Some homeowner associations have apparently used the exception to exclude solar devices altogether.
It was suggested that the law be clarified to limit or remove the visibility exception, as has been done in a number of other states.

VISITOR REGISTRATION SHEET

Select House Comm. on Homeowners Association. 4/14/10

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	S-J
Henry Jones	Attorney - Raleigh
David McLawan	NC Realtors
	CAS
Hope Carmichael	Attorney - Raleigh
	CAI - NC
JOHN LAWTON	CAI - NC
Jane Tzilvelis	Creekside Townhome
TINA CUCCI	CREEKSIDE TOWNHOME
HOWARD E RIPPETOE	VNH. RIPPETOE ASSOC.
John Bowdish	LML HOA

VISITOR REGISTRATION SHEET

Select Committee on Homeowners Associations — 4/14/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Siwiasek	Oyster Harbour HOA 2084 Oyster Harbour Pkwy Supply, NC 28462
Ole Host-Madsen	Oyster Harbour HOA 3395 Particle Dr, SW Supply, NC 28462
JOHN BRYAN	Oyster Harbour HOA a164 Harbour Master Cir. Supply NC 28462
Blair Williams	Wake County Clerk of Court
Al Ripley	NC Justice Ctr
BOYD WAGNER DOROTHY WAGNER	—
Mary Coates	homeowner 91 Thearin Dr. / Littleton, N.C. 27850
Gerald G. Babcock	49 Thearin Dr. Littleton N.C.
Jim Slaughter	Attorney
Dena Starling	homeowner
RANK WIEDMAN	homeowner

VISITOR REGISTRATION SHEET

House Select Comm on Homeowners Ass — 4/14/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Louis DeVita	Homeowner
John McInerney	CAI Board of Trustee

VISITOR REGISTRATION SHEET

House Sub of Comm on Homeowners Ass. 4/14/10

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
K E Powell	AOC
/	

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

October 11, 2010

MEMORANDUM

TO: Members, House Select Committee on Homeowners Associations
FROM: Representatives Jennifer Weiss and William McGee
SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Wednesday	October 20, 2010	1:00 p.m.	421

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Douglas at 919-715-3010 or Jayne Nelson at 919-733-5747.

cc: Committee Record _X_
Interested Parties _X_

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

AGENDA

October 20, 2010
1:00 p.m.
Room 421 LOB

I. Introduction

Representative Jennifer Weiss, Co-Chair
Representative William McGee, Co-Chair

II. Review of Findings Included in Interim Report

Committee Staff

III. Presentation on Individual Experiences with Respect to Certain Findings

a. **Board Accountability & Consumer Protection Issues**
Donna Staley
Retired Educator & Chair, Forsyth County Library Board of Trustees
Forsyth County

b. **Declarant Transfer Issues**
Lou DeVita and Frank Wiedman
Brunswick County

c. **Foreclosure Issues**
Girard T. Lew
Lieutenant Commander, United States Navy, Retired
Wake County

IV. Options for Committee Action Relative to Findings

Committee Staff

V. Committee Discussion

VI. Adjournment

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

MINUTES
OCTOBER 20, 2010

Representative Jennifer Weiss, Co-Chair, called the meeting of the House Select Committee on Homeowners Associations to order at 1:05 p.m. in Room 421 of the Legislative Office Building. Members present at the meeting were Co-Chair William McGee, Representatives Chris Heagarty, Julia Howard and Michael Wray. Also present were staff members Karen Cochrane-Brown, Jennifer McGinnis, Bill Patterson, Martha Walston, and committee assistants Cindy Douglas and Jayne Nelson. Co-Chair Weiss thanked the Sergeants-at-Arms (See Attachment #1, Sergeants At Arms Register) and welcomed members, staff and visitors. (See Attachment #2, Visitor Registration)

Co-Chair Weiss stated that first the committee would hear a review of the findings that were included in the interim report and introduced Ms. Jennifer McGinnis, Research Division Staff, to talk about those findings.

Ms. McGinnis, Research Division Staff, thanked Co-Chair Weiss and members and stated that the Co-Chairs had asked staff to review the committee activities of the spring and particularly the findings that the Co-Chairs issued as part of the interim report. Ms. McGinnis reviewed the committee charge, (see Attachment 3); Ms. McGinnis stated that the committee did submit the interim, but there was no proposed legislation associated with that. Ms. McGinnis also reviewed the overview of committee activities and committee findings. (See Attachment 3) Ms. McGinnis explained the 7 findings of the committee. (See Attachment 3) In reference to the committee finding of clarification of the Solar Access Law, Ms. McGinnis stated that the Solar Access Law was enacted in 2007. When explaining Finding 7, Clarification of the Solar Access Law, Ms. McGinnis said that the committee heard from Bob Leker with the State Energy office about ways that the law could be clarified either by removing the visibility exception in its entirety or by changing the language as some other states have done to make it narrow and clear. Co-Chair Weiss thanked Ms. McGinnis.

Co-Chair Weiss stated that the Co-Chairs felt that it would be helpful to hear from some individuals from across North Carolina who had contacted the Co-Chairs to share their stories about some of the issues such as board accountability, consumer protection, declarant transfers and foreclosure issues. Co-Chair Weiss stated that the speakers had been asked to limit their remarks to five minutes and they would be available to answer questions. Co-Chair Weiss stated that the Co-Chairs wanted to make the members of the committee aware of what some people's experiences had been so that the committee would be better able to address this.

Co-Chair Weiss welcomed and introduced Ms. Donna Staley, retired educator and Chair of the Forsyth County Library Board of Trustees from Forsyth County, and stated that she would address the committee on board accountability and consumer protection issues.

Ms. Staley explained her personal experience with a homeowners association. (See Attachment 4) Chairman Weiss thanked Ms. Staley.

Co-Chair Weiss invited Mr. Lou DeVita and Mr. Frank Wiedman from Brunswick County to address the group. Mr. DeVita addressed the group on declarant transfers issues. (See Attachment 5) Mr. DeVita additionally explained that his homeowner's association board was truly a governing board and for twenty years the members of that board were the directors of the commercial corporation. Mr. DeVita additionally explained that in 2004, the declarant appointed three property owners to a board of seven and that same makeup existed today. Mr. DeVita stated that they had bought into a dictatorship, with the dictator protecting their rights. Mr. DeVita stated that they had no recourse at a reasonable cost. Co-Chairman Weiss thanked Mr. DeVita.

Co-Chair Weiss introduced and welcomed Lieutenant Commander, United States Navy, Retired, Gerard T. Lew to talk about foreclosure issues. Co-Chair Weiss stated that Lieutenant Commander Lew deserved to be congratulated as he just returned from a very special occasion, his fiftieth reunion at the U. S. Naval Academy.

Lieutenant Commander Lew explained his personal situation. (See Attachment 6) Lieutenant Commander Lew additionally stated that he has served in the past on a homeowners board of directors and their architectural control committee in Kildaire Farms so he feels that he is familiar with both sides of the issues. Lieutenant Commander Lew thanked the committee and stated that he would deeply appreciate any action that would protect both the homeowners and the association from the abuses that can go on from people that do not know what they are doing or who do not care. Co-Chair Weiss thanked Lieutenant Commander Lew.

Co-Chair Weiss stated that the committee wanted to bring the speakers to the meeting because they had been in touch with the committee and to remind the committee members of their tasks ahead.

Co-Chair Weiss stated that next the speakers would be different members of committee staff to speak on options for committee action relative to the findings.

Representative Heagarty asked for clarification on North Carolina's foreclosure statute. Representative Heagarty stated that North Carolina's foreclosure statute, as he

understood it, required public notice both through service and in publication. Representative Heagarty asked if he was misunderstanding the statute. Co-Chair Weiss stated that Representative Heagarty's understanding of the statute was correct. Co-Chair Weiss acknowledged Lieutenant Commander Lew, who stated that in his case a notice was published in the Knightdale Paper, but it never showed up in the Raleigh paper even though the address is in Raleigh.

Co-Chair Weiss stated that the Co-Chairs had met with staff and asked them to develop a set of options around each finding so there would be a number of different possibilities for the committee to follow. Chairman Weiss stated that those decisions did not have to be made today and that staff has been asked to go over each finding and give a set of options that could be pursued.

Co-Chair Weiss introduced Ms. McGinnis, Research Division Staff. Ms. McGinnis stated that both Co-Chairs directed staff to assemble a list of potential options for committee action. Ms. McGinnis stated the options were broken down by issues, and because the issues of board accountability and consumer protection were so intimately intertwined, the list of options for committee action that were developed were appropriate to apply to both issues. Ms. McGinnis explained Findings and Options for Committee Action numbers 2 and 5. (See Attachments 3 and 7) In reference to the first option, Adopt the Uniform Common Interest Owners Bill of Rights, Ms. McGinnis stated that one of the commissioners on the Uniform Law Commission had spoken to the committee in the spring on the amendments to both the Uniform Common Interest Ownership Act, which is an omnibus act, and the Common Interest Bill of Rights Act, which is a part of the Omnibus Act, but is capable of standing alone. In reference to the second option, Allow/Require Alternative Dispute Resolution, Ms. McGinnis added that this was one of the chief concerns with board accountability because the options are very limited for homeowners who are engaging in disputes with their associations; basically their only recourse is a civil action which is very costly. In reference to the third option, Add Provisions Governing Board Discretion in Enforcement, Ms. McGinnis stated that early in the spring the committee heard numerous complaints and concerns from homeowners concerning arbitrary enforcement by homeowners associations; the associations would be aggressive with some homeowners, but allow other homeowners to proceed with the same activity. In reference to the last option, State Oversight Agency, Ms. McGinnis stated that in 2008, Virginia enacted the Common Interest Community Board which has enforcement powers in relation to homeowners associations and management companies, and Virginia also has a body known as the Common Interest Community Ombudsman which is an informational and advisory body.

Co-Chair Weiss asked if committee members had any questions for Ms. McGinnis on Findings two and five, Board Accountability and Consumer Protection. There were no questions. Co-Chairman Weiss stated that the committee would delve into this more thoroughly in future meetings, but did want to give a range of options to consider as these matters are thought about and requested that members contact staff if more clarification is needed.

Co-Chair Weiss introduced Mr. Bill Patterson, Research Division Staff, to speak about Finding number 3, Disclosure, and on the options. Mr. Patterson thanked Co-Chair Weiss and members of the committee. Mr. Patterson explained Finding 3 and the options. (See Attachments 3 and 7) Mr. Patterson stated that he would like to make a correction in reference to the bottom of page 5 of the handout, because there is already authority in the sense that it says "..**at least** the following information must be included" and because the form already contains some information about homeowners associations, that is, if there are already homeowners association assessments. Mr. Patterson stated that the commission already has the authority to do this and so if the legislature wanted to request the commission to make a change to the form to include more information about homeowners associations, it would already have that authority. Mr. Patterson stated that Ms. McGinnis mentioned the Virginia statute and in the course of reviewing it, he noticed that it contained some provisions that are similar to what the Uniform Act provides with regard to having the covenants; the declaration; the association rules, regulations and by laws provided by the sellers of properties in planned communities. Representative Weiss asked if there were any questions. There were no questions. Mr. Patterson also stated that the standard offer to purchase contract form that is used in real estate transactions has an addendum that is intended to be attached when there is a homeowners association and so that is another means by which this information is currently intended to be provided to prospective purchasers.

Co-Chair Weiss introduced Ms. Martha Walston, Research Division Staff, to speak on Declarant Transfer Issues and four options. Ms. Walston defined a declaration as an instrument that creates a planned community or condominiums; and defined the declarant as someone who enters into this declaration. Ms. Walston explained Finding number 4, Declarant Transfer Issues and options. (See Attachments 3 and 7)

Co-Chair Weiss asked if there were any questions for Ms. Walston. Representative Heagarty asked in reference to option 3, how often are contracts terminated that are determined to be unconscionable. Ms. Walston responded that she does not know. Representative Heagarty stated that he understands that North Carolina and North Carolina Supreme Court has maybe once or twice in the state's history recognized a

contract to be unconscionable. Ms. Walston stated that was one of the issues that was raised in Webster's Law of Real Estate dealing with the Condominium Act in North Carolina and the Planned Community Act; Webster pointed out that it is hard for a unit owner to proceed in an action against the declarant because it only talks about a contract that is unconscionable. Representative Weiss stated that there is parallel law in the Condominium Act, that handles declarant transfers differently.

Co-Chair Weiss introduced Ms. Karen Cochrane-Brown, Research Division Staff, to speak on Finding 6, Foreclosure Issues. Ms. Cochrane-Brown explained Finding 6 and options. (See Attachments 3 and 7) Ms. Cochrane-Brown stated that last summer the General Assembly amended this section of both the Condominium Act and the Planned Community Act to strengthen the requirements in regards to giving notice of a claim of lien in these situations. The law was strengthened to require that the association had to give at least fifteen days notice to the homeowner by regular mail before filing a claim of lien and had to use best efforts to identify owner's real address if it was different than the actual lot the assessment applied to. Ms. Cochrane-Brown stated that there are some issues at times with translating Chapter 45 of the Foreclosure statute to homeowner's statute as there is not a clear interface between those two statutes and suggested that the committee might want to consider what changes might be necessary to clarify that. Co-Chair Weiss asked if there were any questions for Ms. Cochrane-Brown. There were none.

Co-Chair Weiss introduced Ms. Jennifer McGinnis, Research Division Staff, to speak on Finding 7, Solar Access Issues. Ms. McGinnis explained this finding and options. (See Attachments 3 and 7) Ms. McGinnis stated that the Solar Access Law that was enacted in 2007 limited or invalidated new restrictive covenants and city and county ordinances that would have prohibited installation of solar devices. Co-Chair Weiss asked if there were any questions in regards to Solar Access Issues. There were no questions.

Co-Chair Weiss stated that the Committee wanted to present a good menu of options that the committee could consider and explore to decide what is the best way to resolve issues while balancing everyone's rights and interest in the process. Co-Chair Weiss asked members to talk with their constituents and other interested parties about the information presented at the meeting and to email or otherwise communicate any additional information to committee members. Co-Chair Weiss asked if Co-Chair McGee had any comments. Co-Chair McGee thanked the presenters for attending the meeting and offered his personal insights. Co-Chair McGee stated that the committee saw different issues that need to be addressed and that the findings and options, which afford protection for all, are one of the goals that he has, including disclosure and notice, board knowledge, board accessibility, the homeowners association ownership and what they own and when they became the owners and were able to make the decisions concerning these common areas. Co-Chair McGee thanked all in attendance.

Co-Chair Weiss thanked all in attendance and also thanked the staff for their diligent work.

There being no further questions, the meeting was adjourned at 2:25 p.m.

Jennifer Weiss
Co-Chair Jennifer Weiss

Cindy Douglas
Cindy Douglas, Committee Assistant

AH #1
10/20/10

HOUSE PAGES

NAME OF COMMITTEE House Select DATE 10- -10
on Home Owners Assoc.

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: Martha Pennah
2. Name: Marvin Lee
3. Name: Fred Hines
4. Name: Young Pal

AH #2
10/20/10

VISITOR REGISTRATION SHEET

House Gol. Comm. Homeowners Ass. — Name of Committee

10/20/10 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAN & ANN BERGBAUER	SELF 102 ST JOHNS CT, CHOCOWINITY, NC 27817
Tom Miller	AGO for NC REAL ESTATE COMM'N
DIANA STARLING	HOMEOWNER RAL, NC
Donna Staley	retired, have a daughter of a townhome - Winston-Salem, NC
Joy Garrett	Homeowner 11401 Tavernay Parkway, Charlotte, NC 28262
Matt Tomic	Star News (Wilmington) 1005 S. 17th St., Wilmington NC
Jennifer Mooney	Comm. Dev. Coor. Land Arc 115 Allforth Cary NC 27519
Bill Rowe	NC Justice Center BOARD OF
MICHAEL SHIFLETT	~~COMMUNITY ASSOCIATION MOTIVE TENTS~~ INTERNEIGHBORHOOD COUNCIL OF DURHAM
John Stone	CAS PO Box 83, Pinehurst NC 28370
Jennie Renner-Yeamans	NC Housing Coalition 118 St Mary's St, Raleigh NC

VISITOR REGISTRATION SHEET

House Sel Comm Homeowner Assn — 10/20/10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
WILLARD M. VANGRAFEILAND	LAKE ROYALE 9024 LAKE ROYALE LOUISBURG NC 27549
Tim Pendergast	321 Lake Royale, Louisburg NC 27549
Ole Madsen	Oyster Harbour HOA VP BOD 3375 Portside Dr. ISW Supply, NC 28462
Robert Simasek	Oyster Harbour 2084 Oyster Harbour Pkwy SW, Supply, NC 28462
David McGowan	NC Realtors
Jessi Hayes	NC Home Builders Assn.
Dara Stubbins	CAI - Exec Director
John Lawton	HBW, Inc.
Hope Carmichael	Raleigh NC
[signature]	AOC

VISITOR REGISTRATION SHEET

Nerve Sel. Comm Homecare Ass — 10/20/10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Mengert	Association Management Group, Inc. 612 FRIENDLY AVE GREENSBORO, NC
JOHN SHAW	
Virginia Davis	York Properties - NC-CA-LAC 1900 Camden St Raleigh NC 27605
Sarah Ovaska	NC Policy Watch
Gerard + Annette Lew	111 Overview Lane Cary NC 27511
HOMECARE PLUS LLC	1820 NATALIE BROOK RALEIGH 27609

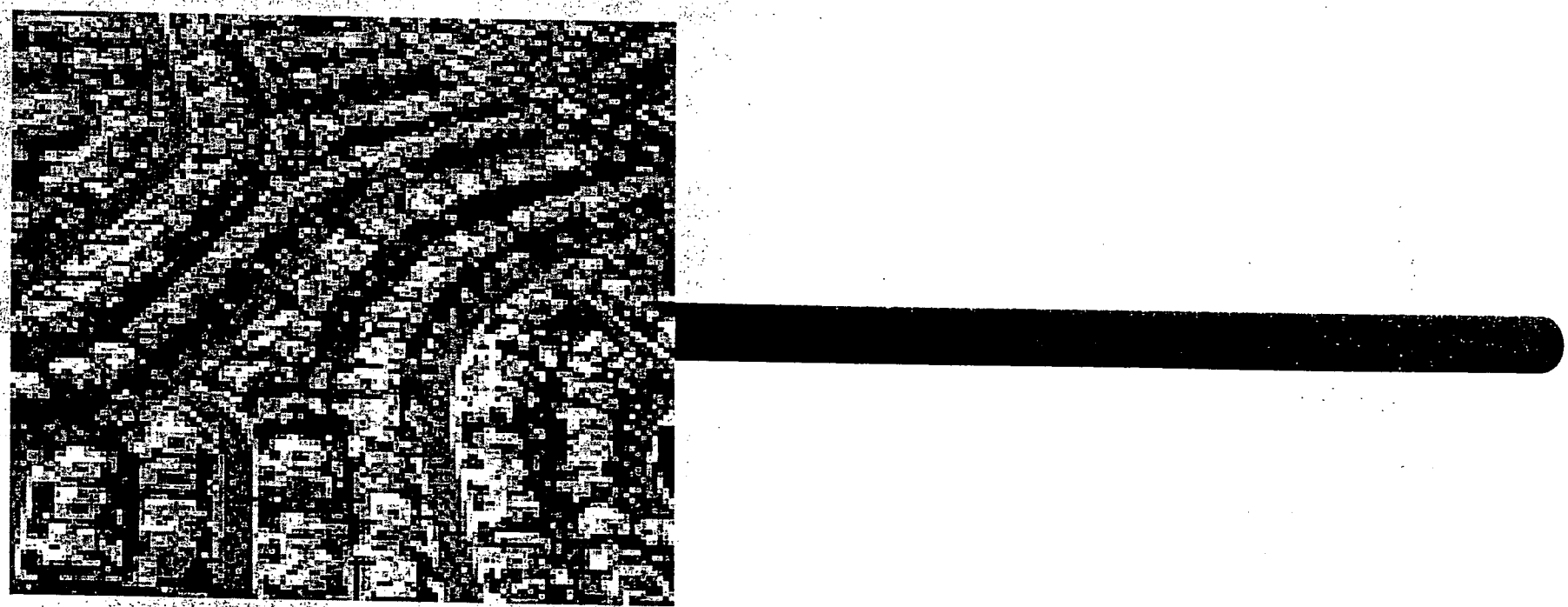
10-20-10 ATT#3

√on website

ATT#3

House Select Committee on Homeowners Associations

October 20, 2010



Committee Charge ~

- Study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and recordkeeping of the associations, and other relevant issues deemed appropriate
- Authorized to submit an interim report and proposed legislation by May 1, 2010, and required to submit a final report by February 1, 2011.

Overview of Committee Activities

- 6 meetings held January through April 2010
- Interim Study Report and Findings issued



Committee's Findings

- Board Accountability
- Disclosure
- Declarant Transfer
- Consumer Protection
- Foreclosure
- Clarification of Solar Access Law

Finding 1
Demographics

Issues associated with homeowners associations (HOAs) can reasonably be expected to increase rather than decrease as the number of associations operating in the State grows along with population

Finding 2
Board Accountability

Need to provide homeowners with better recourse when seeking to challenge actions by HOA Boards

- Committee received complaints concerning flagrant violations of the applicable statutes and/or HOA bylaws (failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants)
- Only recourse currently available to homeowners in most cases is to commence a civil action, which is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense

Finding 3
Disclosure

Need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property

- Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding of the existence of restrictive covenants at the time they purchased their homes
- G.S. 47E-4 requires sellers of residential real property to furnish purchasers with a residential property disclosure statement, using a form developed by the Real Estate Commission ("REC"), which must include, among other things, "restrictive covenants affecting the real property." The current disclosure statement, however, only requires disclosure of ***violations*** of restrictive covenants

Finding 4
Declarant Transfer Issues

Law should be clarified with regard to the obligations of a declarant (developer)

- Complaints received concerning abuses by a declarant (refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems)
- Unlike the Condominium Act, the Planned Community Act does not limit the time period in which a declarant may maintain control of the association

Finding 5
Consumer Protection

Need for additional consumer protections to better protect homeowners from abusive HOA practices

- Complaints received about unreasonable actions by boards include: arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, abuse of the foreclosure process, and failure of the law to give homeowners enough rights to challenge the actions of HOA Boards
- Boards can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of an association, cause additional improvements to be made as part of the common elements and assess homeowners for those improvements, and such actions are often taken without giving notice or an opportunity to vote to homeowners

Finding 6
Foreclosure Issues

Although the PCA authorizes the use of foreclosure to satisfy HOA lines, the foreclosure statute was never intended for this purpose

- Information received from the legal counsel to the Administrative Office of the Courts about a number of incongruities between the applicable statutes
- Suggestions offered to resolve these incongruities, and other suggestions offered to prohibit or limit use of foreclosure by HOAs in some or all cases

Finding 7
Clarification of Solar Access Law

- Law that invalidates any new restrictive covenants that prohibit installation of solar collection devices contains an exception that allows covenants to prohibit a solar device if it is visible from a roof slope or façade or faces a public access way. Information received that the exception has been used by HOAs to exclude solar devices altogether
- Suggestion received that the law be clarified to remove or limit the "visibility exception"

Potential action for Committee Consideration



Board Accountability (2)/ Consumer Protection (5)

- Adopt the Uniform Common Interest Owners Bill of Rights Act. (UCIOBRA)
- Authorize or require that disputes between HOAs & homeowners be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding (UCOIBRA Sec. 8 authorizes)
- Add provisions governing board discretion in enforcement (UCOIBRA Sec. 8)
- Establish open meeting requirements (UCOIBRA Secs. 11 & 12)
- Enhance record-keeping requirements (UCOIBRA Sec. 16)
- Institute procedures a HOA must follow that prior to: (1) adopting, amending, or repealing any rule; or (2) imposing a special assessment (UCOIBRA Sec. 17)

Board Accountability (2)/ Consumer Protection (5) (con't)

- Allow imposition of punitive damages for a HOA's willful failure to comply with consumer protection provisions (UCOIBRA Sec. 21)
- Create a new State-level agency to register and oversee the activities of homeowner associations as provided in Article 5 of the Uniform Common Interest Ownership Act, or empower current State entity to do so (Real Estate Commission (REC)). Possible model is Virginia's Common Interest Community Board and The Office of the Common Interest Community Ombudsman

Disclosure (3)

- Either request the REC to amend the disclosure form to require sellers to disclose the existence of HOAs and covenants or amend G.S. 47E-4 to require this change to the form. In addition, strengthen the disclosure requirement by:
  - eliminating the option of making "no representation" currently permitted under G.S. 47E-4(a)(2) (only with respect to the new disclosure of HOAs and restrictive covenants)
  - amend G.S. 47E-2(9), which currently exempts "the first sale of a dwelling never inhabited" from the disclosure requirements of G.S. 47E-4, to require the new disclosure of HOAs and restrictive covenants in the first sale

Disclosure (3)

- Amend the Planned Community Act to require all sellers of property in planned communities to provide purchasers with a copy of the declaration, covenants, bylaws, and the association rules and regulations (as is required under the Uniform Common Interest Ownership Act)
- Amend the Planned Community Act to require sellers to provide prospective buyers of lots in planned communities with a brochure to be developed by the REC advising them in simple, understandable terms of basic powers of HOAs, examples of restrictions to which they may be subject, and how to obtain a copy of the governing documents containing the restrictions that apply to the property in question

Declarant Transfer Issues (4)

Add language to PCA that:

- Option 1 - Specifies time limit for declarant control
- Option 2 - Specifies obligations and liabilities of declarant who transfers declarant interest
- Option 3 - Allows HOA to terminate contracts and leases entered into by declarant during period of declarant control
- Option 4 - Provides HOA or lot owners with right of action and remedy against declarant for breach of contract or tort during period of declarant control

Declarant Transfer – Option 1

- PCA states that declaration may provide for period of declarant control
- Condominium Act specifies when declarant control must end - no later than two years after the last offering of a unit for sale by the developer

Declarant Transfer – Option 1 (con't)

G.S. 47C-3-103(d) of the Condominium Act reads:

"Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 120 days after conveyance of 75% of the units to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale; or (iii) two years after any development right to add new units was last exercised."

Declarant Transfer – Option 2

Condominium Act sets out liability when transferor transfers any special declarant right.

Declarant Transfer – Option 2 (con't)

G.S. 47C-3-104(b) of the Condominium Act reads:

"Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

1. A transferor is not relieved of any obligation or liability arising before the transfer.
2. If the successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.
3. If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the rights and arising after the transfer.
4. A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

Declarant Transfer – Option 3

- PCA allows association to terminate contracts and leases entered into by the declarant before the executive board elected by the unit owners takes office, but only if the contract or lease is not in good faith or was unconscionable to the lot owners.
- Condominium Act expands the authority to terminate contracts and leases during declarant control.

Declarant Transfer – Option 3 (con't)

G.S. 47C-3-105 of the Condominium Act reads:

"If entered into by or on behalf of the association before the executive board elected by the unit owners takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of the declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners takes office upon not less than 90 days' notice to the other party."

Declarant Transfer – Option 4

- Both the PCA and Condominium Act toll any statute of limitation affecting an association's right of action against the declarant for a tort or breach of contract by the declarant during the period of declarant control.
- The Condominium Act sets out the lot owners' right of action and remedy for the declarant's tort or breach of contract.

Declarant Transfer – Option 4 (con't)

G.S. 47C-3-111(c) of the Condominium Act reads:

"If an action is brought against the association for a wrong which occurred during any period of declarant control, and if the association gives the declarant who then controlled the association reasonable notice of and an opportunity to defend against the action, such declaration is liable to the association:

1. For all tort losses not covered by insurance carried by the association suffered by the association or that unit owner, and
2. For all losses which the association would not have occurred but for a breach of contract."

Declarant Transfer – Option 4 (con't)

G.S. 47C-3-111(d) reads:

"In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association.

Declarant Transfer Recap

Only the North Carolina Condominium Act contains language that specifies:

- Time limits for declarant control
- Obligations and liabilities of declarant transferor
- Expansive authority of lot owners to terminate contracts and leases entered into by declarant during period of declarant control
- Lot owners' right of action and remedy against tort or breach of contract by declarant during period of declarant control

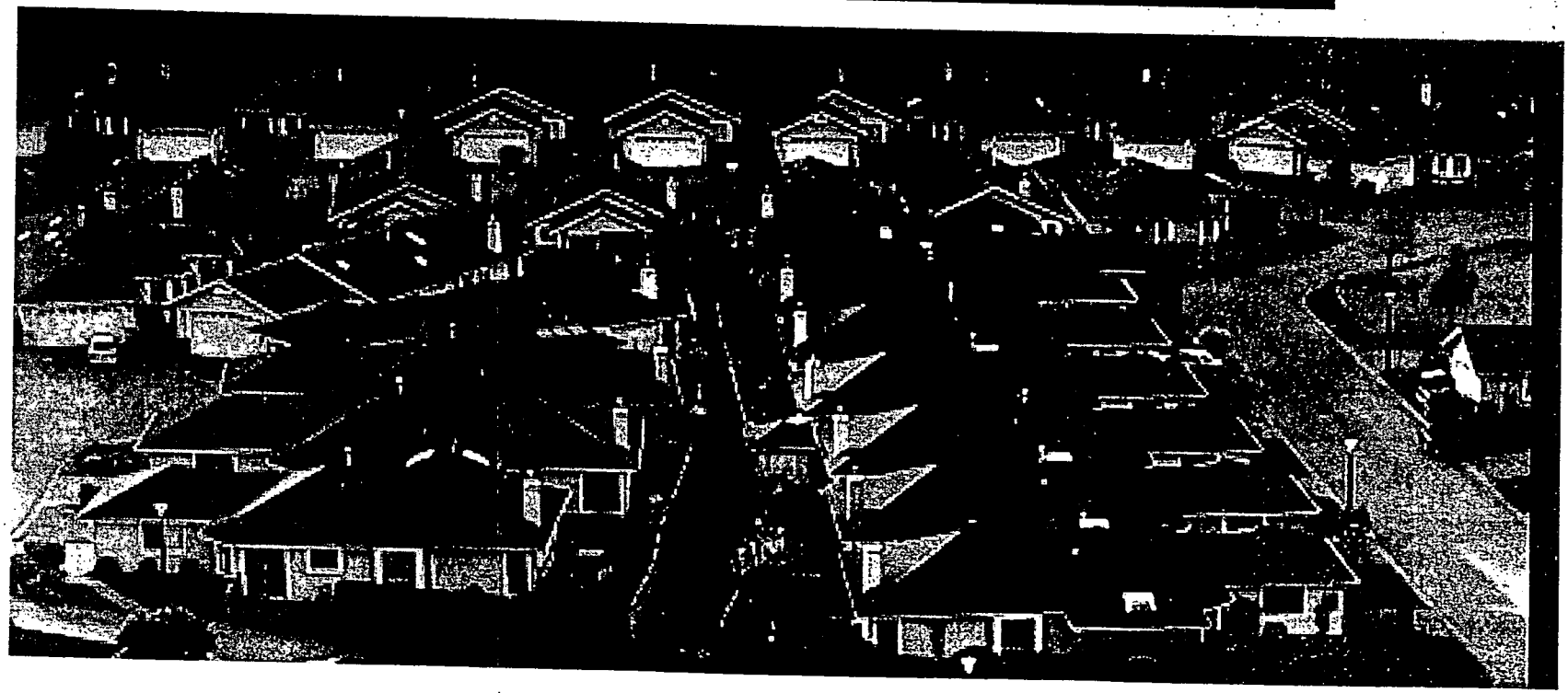
Foreclosure (5)

- Impose one or more of the following limitations on a HOA's authority to use foreclosure to enforce a lien, as recommended in the UCIOBRA
  - The assessment must be at least 3 months past due and the unit owner has failed to accept or comply with a payment plan offered by the association.
  - The executive board must vote to commence foreclosure against the specific unit.
  - The association must apply any payments made by the homeowner first to unpaid assessments, then to late charges, then to attorneys' fees and other collection charges, and finally to unpaid fees, fines, interest, and late fees.
  - The association may not use foreclosure to enforce a lien resulting from unpaid fines and related sums, unless the association has obtained and perfected a judgment against the homeowner.
  - All aspects of the foreclosure must be commercially reasonable.

Clarification of Solar Access Law (7)

- Remove the "visibility exception"
- Limit the "visibility exception," as other states have done, by:
  - Limiting ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; or
  - Limiting required modifications (for aesthetics) that reduce the operating efficiency of the system.

Questions?



Photos from:
http://www.nuwireinvestor.com/blogs/investorcentric/uploaded_images/Las-Vegas-Suburb-701089.jpg
http://cdn-ugc.cafemom.com/gen/constrain/500/500/85/2010/08/20/16/b9/c4/poxk87g5wswmqb.jpg?imageId=19513422
http://www.mccrearyrealtyhoa.com/clients/203/images/sidewalk.jpg
http://http://www.groovygreen.com/groove/wp-content/uploads/2008/10/hoa_dump.jpg

10-20-10 AM 4

Denise Stiles

This summer I learned that your committee exists and that Representative Bill McGee is your co-chair. After contacting Mr. McGee and sharing my daughter's housing concern, he asked me to address this committee.

Because I am financially involved in my daughter's purchase of her town home, and have more available time than she does, I have met contractors and specialists who have assessed the condition of her home. I want to share what we have encountered as she has attempted to deal with the HOA Board and the Property Manager of her town home association.

First, I will share a portion of the Covenants of the HOA, Article 12, Section 7:

> "The Association shall also obtain a broad form liability policy covering all common areas and all damage or injury caused by the negligence of the Association of any of its agents, officers or employees in an amount of not less than one million dollars for each occurrence..." EXHIBIT 1
>
> The Agent's Authority document, in part, states that he can make or cause "to be made any repairs, not to exceed seven hundred fifty dollars ($750.00) per repair (excluding emergency situations), which in the Agent's opinion, may be necessary to preserve, maintain and protect the property..." EXHIBIT 2

The annual inspection by Pest Control performed in late July 2009, revealed that the insulation and structural beams in the crawl space were wet and covered in fungus as a result of excess moisture.

At our request, on September 6, 2009, Environmental Solutions Group assessed the crawl space, as well as the inside and outside of the home. The findings revealed that on the east side of the home, the Commons area is sloped toward the foundation; puddles of water, with varying degrees of fungal growth and the foundation walls showed signs of water infiltration. It was recommended that landscaping be changed so that water is directed away from the foundation, either by additional ground drains or re-grading the swale. Gutters, downspouts and underground lines are clogged. Fifty percent of the inside air breathed inside the home comes from the crawl space. EXHIBIT 3

An assessment in the spring of 2010 by another environmental group revealed that "Floor separation has resulted from the exposure to excess moisture in the crawl space." Elevated levels of toxic molds were found inside; the most hazardous being aspergillus, penicillium and cladosporium. EXHIBIT 4. The same molds were reflected in blood tests in August 2009, with elevations of Level 3 and 4, with 4 being the highest measurable level. Tests were conducted by Commonwealth Labs in Warrenton, Va. Even today, extensive medical treatment is required for my daughter. The environment

inside the home is unhealthy with elevated levels of toxic mold making it uninhabitable. For medical reasons, it was imperative that my daughter vacate her home in mid-September 2009- over a year ago.

The Forensic Engineer's report advised that the underground drain pipes for the gutter downspouts be disconnected so water could run onto the ground until remediation of clogged downspouts and underground drain pipes occurred. Storm water runoff onto neighbors has resulted. EXHIBIT 5

A certified plumber verified there were no water leaks.

An independent certified landscaper assessed the landscaping and verified the grade is sloped toward the foundation; the gutters and downspouts are stopped up; corrugated pipes are stopped up and improperly installed. EXHIBIT 6 (Also see EXHIBIT 7 which shows the HOA's version of a report by its own landscaper as shown in EXHIBIT 8)

In October 2009, the HOA and Property Manager were notified of all findings. Full restoration of the home environment, cleaning of home furnishings and correction of the landscaping were requested.

The HOA meeting for residents is held once a month. When my daughter and I would go to the meetings we have found the following: the meeting room with the Board members inside was locked so that no other residents could enter the meeting room; on several occasions, the HOA Board refused to discuss my daughter's concerns; and there was no action to remediate the landscaping as was recommended in the reports which had been sent to them. The HOA Board continually stated that the Board has nothing to do with her problem and that is an insurance matter. However, Travelers Insurance Company, the insurance carried by the HOA, does not address her issue. Yet the Covenants of the HOA states in Article 12 , Section 7 " The Association shall also obtain a broad form public liability policy covering all common areas and all damage or injury caused by the negligence of the Association of any of its agents, officers or employees in an amount of not less than one million dollars for each occurrence ....." The Agent's Authority document in part states that he can make or cause "to be made any repairs, not to exceed seven hundred fifty dollars ($750.00) per repair (excluding emergency situations), which in the Agent's opinion, may be necessary to preserve, maintain and protect the property...". My daughter is current with her mortgage, insurance, HOA dues and has recently completed timely payment of a $5,000 assessment. The HOA Board continually states "they are broke". There are 176 units and she pays dues of $118 per month.

Attendance at the Homeowners Board Meetings have yielded no results toward rectifying her circumstance

The HOA Board has never admitted that they have read the initial complaint because they said they "would not understand it". The Property manager admitted at the April 26,

2010, HOA Board Meeting, that he had not even read the initial complaint which was sent him in October 2009. Many of the members of the HOA Board serve on the Architectural and Grounds Committee which meets monthly. The members of this committee who are on the HOA Board admit they do not know what to look for when they walk the grounds "sporadically" because they "are busy, work elsewhere and don't have time."

In an e-mail, the Property Manager admitted that, "The downspots that are buried are a problem for us. If they are stopped up, it is the our job to find this out. I would say 80% of the gutters are stopped up due to being buried for so long."A board member, Brad Budris, responded "I would be concerned about doing anything, as in my mind that is admitting guilt."

The Board and Property Manager say they have no remedy for my daughter's problem. They have made no attempts to correct landscaping in the Commons Area. The downspouts have been disconnected from the clogged underground drains and storm water runoff onto neighbors' property frequently occurs. Since there are no plans to correct the landscaping; any indoor remediation is futile. Her personal homeowner's insurance adjuster stated in his report, "This problem is the result of a drainage problem on the exterior of the home allowing ground water to pool against the foundation of the home. This is created by landscaping issues. The land is sloping towards the home. This poor drainage is a long term issue. Subsequently, the moisture within the crawl space has created a mold problem." EXHIBIT 11

The HOA Board and Property Manager show no concern for her critical dilemma. Their denial of a problem demonstrates total irresponsibility for the position they hold. They have violated their own covenants and responsibilities related to properly managing, preserving and maintaining the property.

The Board and Property Manager are complacent and fail to respond in a timely manner to requests for information such as reports and ledger sheets. Apathy in the town home community is commonplace and board meetings have little member attendance. After discussing community concerns with other Crosswinds residents, it seems that the community feels that the Board members are unconcerned about the health and well-being of the community.

I am urging this committee to protect the homeowners of such housing facilities by setting forth legislation that gives residents the right of recourse and grievance without being subject to retaliation. The Board and Property Manager should be required to receive training in Public Relations, rules and regulations that are uniform and equitable for all and be required to account, record and respond to matters brought before them within a specified time period.

The term "Private Property" has made these communities exempt from compliance with storm water and environmental health issues. The Forsyth County Environmental Health Supervisor and the Senior Civil Engineer in the Storm Water Division of

the City of Winston-Salem admit the town home community is out of compliance but the "private property" status prevents their departments from demanding remediation. No State agency has jurisdiction over these communities because they are "private property." There is no recourse for any homeowner outside the courtroom. Consumer protection should be afforded this segment of the population.

This is a desperate call for action by the legislature so homeowners are guaranteed protection. It won't help my daughter at this point, but we want others to be spared her dilemma.

Thank you, Mr. McGee, for inviting me to speak and to the committee for hearing my concerns related to our situation and to that of others.

Please note: Mr. McGee has a copy of the initial report filed with the Board and Property Manager.

If you have further questions of me, I can be reached at:

1855 Lake Drive
Winston-Salem, N.C. 27127
Phone- (336) 788-7060

Exhibit 1

K. Stone - Dix

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE CROSSWINDS, PHASE ONE, RECORDED IN PLAT BOOK 28, PAGE 106 FORSYTH COUNTY REGISTRY

THIS DECLARATION, made this 8th day of SEPTEMBER, 1982, by THE FORTIS CORPORATION, a North Carolina Corporation, hereinafter referred to as the "Declarant";

W I T N E S S E T H :

WHEREAS, the Declarant is the owner of certain property in Forsyth County, North Carolina, more particularly described as follows:

All that certain parcel of land situate, lying and being in the State of North Carolina, County of Forsyth, containing 20.235 acres as shown on a plat entitled "THE CROSSWINDS, PHASE I", Job #905-3, dated August 23, 1982, prepared by Otis Jones Surveying Company, and recorded in the office of the Register of Deeds of Forsyth County in Plat Book 28, at Page 106, to which reference is hereby made for a more complete description.

WHEREAS, Declarant will convey the Property, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

NOW, THEREFORE, the Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, restrictions, covenants and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property

Ms. Staley brought these with her as proof, but did not go over them in detail

ARTICLE XII

COVENANTS OF OWNER TO KEEP UNITS INSURED AGAINST LOSS TO REBUILD AND TO KEEP IN GOOD REPAIR

The Declarant covenants with the Association, on behalf of itself and on behalf of each subsequent owner of a lot within the properties, and each owner of any lot within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in said deed, or by exercise of any act of ownership, is deemed to covenant:

(1) The Association shall obtain a group or blanket insurance policy equal to the full replacement value of the project. Said policy shall contain a Replacement Cost Endorsement providing for replacement of a unit from insurance loss proceeds.

(2) The Owner shall apply the full amount of any insurance proceeds to the rebuilding or repair of any dwelling unit (subject to the provisions and covenants contained in any mortgage or mortgages creating a lien against any lot).

(3) The owner shall rebuild or repair the dwelling in the event of damage thereto provided the dwelling is insured under a group or blanket hazard insurance policy which contains a replacement cost endorsement providing for replacement of a dwelling from insurance proceeds.

(4) The owner shall keep the dwelling unit in good repair except for repairs required of the Association.

(5) Premiums for the group or blanket hazard insurance policy shall be a common expense and shall be collectible in the same manner and to the same extent as provided for annual and special assessments in Article V.

The lien for assessments for insurance premiums shall be

BOOK 1375 PAGE 1440

subordinate to the lien of any first mortgage in the same manner provided for annual and special assessments.

(6) Such policies shall provide that insurance proceeds payable on account of loss of or damage to, the real property shall be adjusted with the carrier (s) by The Crosswinds Association, Inc., and shall be payable solely to the home owner's mortgagee, if any, and The Crosswinds Association, Inc., as Insurance Trustee for the home owner (s). Such insurance proceeds shall be applied to repair or restoration of the property as hereinafter provided. All such insurance policies shall provide that coverage may not be cancelled by the carrier without first giving The Crosswinds Association, Inc., and unit mortgagee, if any, ten days written notice of cancellation. All such policies shall contain, if obtainable, a waiver of the right of subrogation against any unit owner, members of the unit owners family, The Crosswinds Association, Inc., its officers, agents and employees, as well as a waiver of the "pro rata" clause.

(7) The Association shall also obtain a broad form public liability policy covering all common area and all damage or injury caused by the negligence of the Association or any of its agents, officers or employees in an amount of not less than one million dollars for each occurrence and such policies shall contain a waiver of the right of subrogation against members of The Crosswinds Association, Inc., its officers, agents and employees.

(8) Any owner may, if he wishes, at his own expense, carry any and all other insurance as he deems advisable beyond that included in the home owners policy required by the Association.

BOOK 1375P 144

Exhibit 2

IV.

AGENT'S AUTHORITY

The Association hereby authorizes and empowers the Agent to perform such acts and take such steps as are necessary, in the Agent's opinion, to operate and manage the property for the Association including, but not limited to (1) collecting all Association dues and other charges and amounts due or to become due per the Board of Directors of the Association and giving receipts for the amounts so collected; (2) depositing and disbursing from an escrow account maintained by Agent as required by North Carolina real estate law any and all funds which may be collected by Agent on behalf of Association and to pay for any services/expenditures for which Association is responsible; (3) instituting and prosecuting such judicial actions and proceedings as may be necessary to recover Association dues and other sums due to the Association from the townhome owners, including the authority, in the Agent's discretion, to settle, compromise and release any and all such judicial actions and proceedings; (4) making or causing to be made any repairs, not to exceed Seven Hundred Fifty Dollars (~~$750.00~~ $500.00 per year) per repair (excluding emergency situations), which in the Agent's opinion, may be necessary to preserve, maintain and protect the Property, to maintain the facilities and services to the townhome owners as required by the Association agreement at the sole expense of the Association; and to comply with any duties or obligations imposed upon the Association by any local, state or federal law regulations, including the authority to purchase such supplies and hire such labor as may be necessary in the Agent's opinion to accomplish such repairs; (5) posting signs, as approved by the Crosswinds Board of Directors, in a reasonable and tasteful manner announcing Agent as the property manager for the property.

V.

Exhibit 3

Environmental Solutions Group

September 6, 2009

Danette Staley
1901 Windy Point Ct.
Winston Salem, NC 27127

Reference: Summary of Air Quality and Moisture Assessment
1901 Windy Point Ct.
Winston Salem, NC 27127

Environmental Solutions Group LLC (ESG) has completed a moisture and air quality assessment in the above referenced property. The purpose of the assessment was to determine if material on the floor joists and sub-floor of the crawl space are pathogenic and if the air quality in the home has been affected by the possible release of fungal spores. This **Summary Report** contains our assessment methodology and our conclusions and recommendations.

The assessment was requested by the owner of the home, Danette Staley, and conducted on September 1, 2009 by Walt Schnabel, CRMI, and Dan Whittaker.

The residence is a one-level brick and vinyl-sided town home with a brick foundation and a crawl space under the entire home. One HVAC system serves the house with the air handler located in the attic.

The assessment consisted of a visual assessment of the interior, exterior and crawl space. Tools used during the assessment include a Fluke 983 handheld optical particle counting device and a Gray Wolf DirectSense Air Quality Probe connected to a Hewlett Packard handheld computer, Delmhorst Moisture Meter, and Fluke IR Fusion Thermal Imaging Camera. All equipment was cleaned and calibrated on the morning of the assessment.

Air samples for lab analysis were collected from inside and outside of the building using Micro5 air sampling cassettes and Buck Bio-Air collection system using MEA and DG-18 media along with one direct swab sample from a floor joist in the crawl space. These samples were delivered to an independent microbiology laboratory, Scientific Analytical Institute, in Greensboro, NC on September 1, 2009.

History:

A pest control services company was recently in the crawl space and informed the homeowner that fungal growth was occurring on the floor system. The owner of the home is concerned that previous measures to reduce moisture issues in the crawl space may not be functioning as intended.

Findings:

Exterior: the house is sited on a lot that is slightly sloped from the front of the home to the street. At the rear of the home the lot is slightly sloped toward the street. On the right side the lot is slightly sloped toward the foundation. Rainwater may be collecting in this area and not draining properly away from the foundation. The lot has several large trees surrounding the house and is moderately landscaped with shrubs and bushes near the foundation at the front of the home.

At the rear of the home the door for the crawl space does not completely shut.

All downspouts have extensions; although the discharge end of the buried extensions could not be located.

- Landscaping: check soil and ground near the foundation for any signs of settling and add topsoil as necessary so that the ground slopes away from the foundation. At the right side of the home additional ground drains or re-grading of the swale is needed to direct water away from the foundation.

- ESG recommends that all gutters, downspouts and underground drain lines be checked for debris and/or obstructions and cleaned as necessary to direct water away from the foundation and crawl space.

Crawl Space: the floor joists in the crawl space show varying degrees of fungal growth and there is fallen or missing insulation from the sub-floor. The vapor barrier is not installed with 100% coverage and the foundation walls show signs of moisture infiltration, especially at the right side (facing front) of the home. Several small puddles of water were noted on the existing vapor barrier.

- The client should consider engaging a professional mold remediation contractor to conduct removal and/or cleaning of affected material in the crawl space as the amount of mold present is considered greater than a normal fungal ecology. ***Note:*** *lab analysis of a direct surface swab sample of material on floor joists in the* ***main*** *crawl space indicates an abundant count of Basidiospores, along with a light count of Cladosporium and trace count of Ascospores. The analyst also indicated a loaded count of hyphal fragments. Refer to the Fungal Glossary below and the lab analysis document included with this Report. The IICRC S520 Standard and Reference.Guide for Professional Mold Remediation accounts for the fact that all indoor environments will have some degree of fungal material that is detectable by a microbiology lab on surface samples collected from the building and has defined this as 'normal fungal ecology'. Hygienists routinely use the lab's scoring system of 1-2-3-4 to define normal fungal ecology as a rating of 1 or 2 (trace or light) with a rating of 3 or 4 (abundant or loaded) being considered an abnormal level of fungi in a surface sample. Note: hygienists also examine the lab findings for hyphal fragments, or pieces of a mold colony. The presence of hyphal fragments is an indication that growth has existed on a surface at some point in time.*

- Remove any damaged insulation and replace with new materials. It is usually best to replace all the insulation in a crawl space where fungal material is present in more than a normal fungal ecology. **Note:** Do not reuse insulation that has fallen to the ground.

- Engage a professional licensed plumber to inspect all of the plumbing system in the crawl space and repair any water leaks that may be active.

- A vapor barrier of 6-mil plastic (thicker is better) should be installed to cover **100%** of the soil. The plastic sheets should overlap by at least twelve inches and be glued down using a non-flammable adhesive. Staples are also an effective method of holding the barrier down. No wrinkles or perforations are acceptable. The EPA recommends that the barrier be attached to walls and support materials using tack strip and a sealant. ***Note:*** *if the client chooses to have the fungal material in the crawl space removed, the contractor who does this work would also be qualified to properly install the vapor barrier.*

Note: *it is not unusual to have some fungal growth on wood in crawl spaces in humid areas of the southeastern United States. A small amount of mold is to be expected, however, it is very important that crawl spaces be kept dry to keep fungal growth in check. Damp crawl spaces promote fungal and bacterial growth, which in turn can destroy wood over time and attract insects that can damage wood in short order.*

Approximately 50% of the air breathed on the main level of a home has come from the crawl space. *Most people do not realize this and dismiss mold in the crawl as unimportant. Over time, the continued exposure to airborne spores and bacteria in the home may lead to decreased immune function and disease. This is especially the case with individuals who are at home during the day.*

The earth in a crawl will always equal the yearly average temperature for the area. This helps keep the crawl warmer in winter (to make pipes less likely to freeze) and cooler in summer. The latter creates a problem in the south if the vents are open, allowing warm, humid air to enter the crawl and mix with cooler air, potentially creating a condition for condensation to form on cooler surfaces in the crawl. Over time, this condition could lead to fungal growth.

Completely covering the soil with a vapor barrier is one of the best methods to make a home healthier. Not only does an effective vapor barrier lessen the risk of condensation (and thus mold) forming in the crawl from groundwater evaporation, but also it covers the bacteria-filled soil, which in turn reduces bacteria levels in the home.

Heating Ventilation and Air Conditioning System (HVAC): maintenance was done on the system in late June of this year.

- If the client chooses (as recommended) to have the fungal material in the crawl space removed, ESG recommends a licensed HVAC contractor inspect and clean the air handler after the fungal growth is removed (this service is often provided by remediation contractors).
- All exposed joints at the ducts should be sealed with a mastic type material and preferably verified for tightness. ESG or another third party duct tightness verifier can provide this service.
- Install filters that are a pleated paper type and have a minimum MERV-8, but no higher than MERV-11 rating without approval from an HVAC contractor. Replace every 30 days.

NOTE: A recent study of central North Carolina homes conducted by Advanced Energy found that tight ducts and a tight building envelope eliminated typical pathways for mold spores to enter a home through duct leakage and floor/wall penetrations, driven by forces including the stack effect, HVAC depressurization and pressure differentials from wind.

Air Quality: airborne particle mass (PM_{10}) readings[1] were collected from throughout the home and outdoors as a baseline for comparison. All of the indoor readings in the 0.3 -µm range were found to be above the outside baseline and above the Healthy Indoor Air guidelines. Airborne particle readings in the 0.5 – 10.0-µm range were found to be within the thresholds in all ambient (breathing zone) readings. The only problem area identified was with carpeting. The client should consider cleaning the carpets or removing and replacing them with a solid surface material (the latter is preferred).

Note: environmental experts often rely heavily on airborne particle mass readings in determining the quality of indoor and outdoor air. As spore counts collected via pumps and cassettes do not adequately represent the amount of fungal fragments that are present in the air at any time, digital particle counters and analyzers are ideal for characterizing and enumerating the collected particles.

[1] The EPA and World Health Organization have published standards for airborne particle mass (PM) and Environmental Solutions Group has developed Healthy Indoor Air thresholds based on the standards and over 40,000 particle count readings collected during research at residential homes between 2003 – 2008. This research has been presented at regional and national conferences of the Indoor Air Quality Association and the American Industrial Hygiene Association and is being incorporated into an EPA database. A study conducted by scientists from Denmark and Sweden published in the *American Journal of Respiratory and Critical Care Medicine* in May 2008 found that poor indoor air quality due to elevated airborne particle counts can have a major impact on cardiovascular health, and a major study published in *Environmental Health Perspectives* in October 2008 found that increased levels of airborne particles in the 2.5 µm to 10.0 µm range caused greater incidence and severity of asthma in children. Airborne particle mass readings are a more reliable means of assessing indoor air quality than air sampling for laboratory analysis.

Ambient relative humidity (RH) levels in the home at the time of investigation were observed to be between 61% and 63% (air supply readings were somewhat lower). The ASHRAE comfort range is 40% to 60% and an RH below 40% keeps dust mites and fungal growth to a minimal level. Several rooms are above the maximum recommended RH level of 60% as an RH above 60% will support fungal growth. Additional dehumidification systems on the air handlers should be explored. It should be noted that the outdoor RH level was a comfortable 51%.

Air quality readings for total volatile organic compounds (TVOC), carbon dioxide (CO_2), carbon monoxide (CO) and temperature were collected with the Gray Wolf DirectSense probe. These readings were observed to be within ASHRAE, EPA and/or WHO recommended levels for an indoor environment (refer to the Air Quality Data chart included with this Report).

Additional Recommendations

- The occupants should use a vacuum cleaner with a sealed HEPA filtration system to help capture fine and ultrafine particles. Vacuum carpeted surfaces every day and vacuum or launder draperies on a regular basis.
- The occupants should use MERV-8 or higher rated furnace filters and change them monthly.
- The occupants may be able to limit exposure to dust mites and pet allergens through anti-allergen pillow and mattress covers.
- ESG recommends a re-check of the air quality following any remediation of the fungal growth in the crawl space and repairs to the vapor barrier.

ESG appreciates the opportunity to have provided environmental services for this project. If you have questions or need additional information, please contact us at (336) 373-1538.

Respectfully,

Walt Schnabel, CRMI
Environmental Investigator
Environmental Solutions Group LLC

FUNGAL GLOSSARY OF SIGNIFICANT FINDINGS:

Ascospores are a large category of spores (produced in a sac-like structure) that are found everywhere in nature and include more than 3000 genera. Indoors, Ascospores prefer damp environments and are primary invaders of drywall and materials containing cellulose.

Basidiospores are an allergen/contaminant, and include rusts, smuts and mushrooms. Elevated airborne concentrations indoors might be indicative of water damage or too high of humidity.

Cladosporium is the most frequently found mold in outdoor air. It grows indoors at low concentrations in damp or humid areas, but may be found in high concentrations in water-damaged building materials. It is commonly seen on windowsills, painted walls and a variety of cellulose materials. Its ability to sporulate heavily and become airborne makes it an important allergen when found in high levels. Cladosporium is frequently isolated as a contaminant in foods and is occasionally associated with disease in humans; a few species produce mycotoxins.

Approximately 50% of the air breathed on the main level of a home has come from the crawl space. *Most people do not realize this and dismiss mold in the crawl as unimportant. Over time, the continued exposure to airborne spores and bacteria in the home may lead to decreased immune function and disease. This is especially the case with individuals who are at home during the day.*

The earth in a crawl will always equal the yearly average temperature for the area. This helps keep the crawl warmer in winter (to make pipes less likely to freeze) and cooler in summer. The latter creates a problem in the south if the vents are open, allowing warm, humid air to enter the crawl and mix with cooler air, potentially creating a condition for condensation to form on cooler surfaces in the crawl. Over time, this condition could lead to fungal growth.

Completely covering the soil with a vapor barrier is one of the best methods to make a home healthier. Not only does an effective vapor barrier lessen the risk of condensation (and thus mold) forming in the crawl from groundwater evaporation, but also it covers the bacteria-filled soil, which in turn reduces bacteria levels in the home.

Heating Ventilation and Air Conditioning System (HVAC): maintenance was done on the system in late June of this year.

- If the client chooses (as recommended) to have the fungal material in the crawl space removed, ESG recommends a licensed HVAC contractor inspect and clean the air handler after the fungal growth is removed (this service is often provided by remediation contractors).
- All exposed joints at the ducts should be sealed with a mastic type material and preferably verified for tightness. ESG or another third party duct tightness verifier can provide this service.
- Install filters that are a pleated paper type and have a minimum MERV-8, but no higher than MERV-11 rating without approval from an HVAC contractor. Replace every 30 days.

NOTE: A recent study of central North Carolina homes conducted by Advanced Energy found that tight ducts and a tight building envelope eliminated typical pathways for mold spores to enter a home through duct leakage and floor/wall penetrations, driven by forces including the stack effect, HVAC depressurization and pressure differentials from wind.

Air Quality: airborne particle mass (PM_{10}) readings[1] were collected from throughout the home and outdoors as a baseline for comparison. All of the indoor readings in the 0.3 -µm range were found to be above the outside baseline and above the Healthy Indoor Air guidelines. Airborne particle readings in the 0.5 – 10.0-µm range were found to be within the thresholds in all ambient (breathing zone) readings. The only problem area identified was with carpeting. The client should consider cleaning the carpets or removing and replacing them with a solid surface material (the latter is preferred).

Note: environmental experts often rely heavily on airborne particle mass readings in determining the quality of indoor and outdoor air. As spore counts collected via pumps and cassettes do not adequately represent the amount of fungal fragments that are present in the air at any time, digital particle counters and analyzers are ideal for characterizing and enumerating the collected particles.

[1] The EPA and World Health Organization have published standards for airborne particle mass (PM) and Environmental Solutions Group has developed Healthy Indoor Air thresholds based on the standards and over 40,000 particle count readings collected during research at residential homes between 2003 – 2008. This research has been presented at regional and national conferences of the Indoor Air Quality Association and the American Industrial Hygiene Association and is being incorporated into an EPA database. A study conducted by scientists from Denmark and Sweden published in the *American Journal of Respiratory and Critical Care Medicine* in May 2008 found that poor indoor air quality due to elevated airborne particle counts can have a major impact on cardiovascular health, and a major study published in *Environmental Health Perspectives* in October 2008 found that increased levels of airborne particles in the 2.5 µm to 10.0 µm range caused greater incidence and severity of asthma in children. Airborne particle mass readings are a more reliable means of assessing indoor air quality than air sampling for laboratory analysis.

Ambient relative humidity (RH) levels in the home at the time of investigation were observed to be between 61% and 63% (air supply readings were somewhat lower). The ASHRAE comfort range is 40% to 60% and an RH below 40% keeps dust mites and fungal growth to a minimal level. Several rooms are above the maximum recommended RH level of 60% as an RH above 60% will support fungal growth. Additional dehumidification systems on the air handlers should be explored. It should be noted that the outdoor RH level was a comfortable 51%.

Air quality readings for total volatile organic compounds (TVOC), carbon dioxide (CO_2), carbon monoxide (CO) and temperature were collected with the Gray Wolf DirectSense probe. These readings were observed to be within ASHRAE, EPA and/or WHO recommended levels for an indoor environment (refer to the Air Quality Data chart included with this Report).

Additional Recommendations

- The occupants should use a vacuum cleaner with a sealed HEPA filtration system to help capture fine and ultrafine particles. Vacuum carpeted surfaces every day and vacuum or launder draperies on a regular basis.
- The occupants should use MERV-8 or higher rated furnace filters and change them monthly.
- The occupants may be able to limit exposure to dust mites and pet allergens through anti-allergen pillow and mattress covers.
- ESG recommends a re-check of the air quality following any remediation of the fungal growth in the crawl space and repairs to the vapor barrier.

ESG appreciates the opportunity to have provided environmental services for this project. If you have questions or need additional information, please contact us at (336) 373-1538.

Respectfully,

Walt Schnabel, CRMI
Environmental Investigator
Environmental Solutions Group LLC

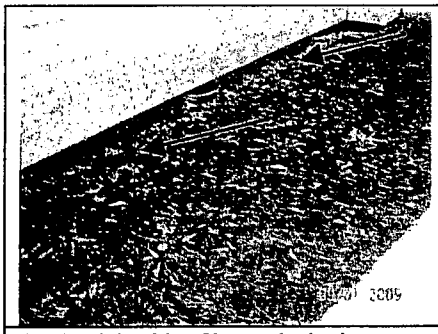
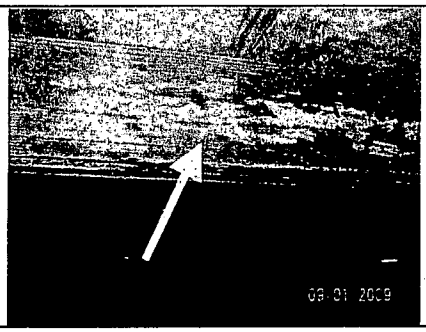
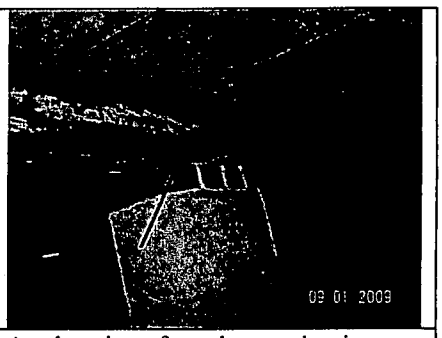
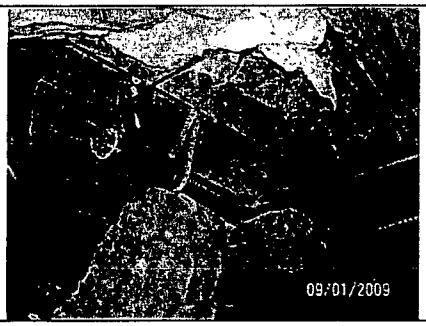
FUNGAL GLOSSARY OF SIGNIFICANT FINDINGS:

Ascospores are a large category of spores (produced in a sac-like structure) that are found everywhere in nature and include more than 3000 genera. Indoors, Ascospores prefer damp environments and are primary invaders of drywall and materials containing cellulose.

Basidiospores are an allergen/contaminant, and include rusts, smuts and mushrooms. Elevated airborne concentrations indoors might be indicative of water damage or too high of humidity.

Cladosporium is the most frequently found mold in outdoor air. It grows indoors at low concentrations in damp or humid areas, but may be found in high concentrations in water-damaged building materials. It is commonly seen on windowsills, painted walls and a variety of cellulose materials. Its ability to sporulate heavily and become airborne makes it an important allergen when found in high levels. Cladosporium is frequently isolated as a contaminant in foods and is occasionally associated with disease in humans; a few species produce mycotoxins.

IMAGE GALLERY

		
On the right side of home the lot is slightly sloped toward the foundation. The ground has settled along the foundation wall. Rainwater may be collecting in this area and not draining properly away from the foundation.	Suspected fungal growth on the main beam for the floor joists in crawl space.	Another view of crawl space showing suspected fungal growth on wood surfaces.
		
Puddles on top of the vapor barrier in crawl space.	Missing, loose and fallen insulation in crawl space.	

Environmental Solutions Group LLC
338 N. Elm St. Suite 215 PO Box 9341 Greensboro NC 27429-0341
Office: 336.373.1538 24-hr: 336.456.3284

021001870

Exhibit 4
1870 #1-L

EMSL ANALYTICAL, INC.
LABORATORY PRODUCTS • TRAINING

Chain of Custody

EMSL Order Number (Lab Use Only):

Company: Environmental Intervention	**EMSL-Bill to:** ☒ Same ☐ Different If Bill to is Different note instructions in Comments**
Street: 4001 B Burlington Rd	Third Party Billing requires written authorization from third party
City: Greensboro **State/Province:** NC	**Zip/Postal Code:** **Country:**
Report To (Name): Brian	**Fax #:**
Telephone #:	**Email Address:**
Project Name/Number: 1901 WS	
Please Provide Results: ☒ Fax ☒ Email	**Purchase Order:** **U.S. State Samples Taken:** NC

Turnaround Time (TAT) Options* - Please Check

☐ 3 Hour ☐ 6 Hour ☐ 24 Hour ☐ 48 Hour ☐ 72 Hour ☒ 96 Hour ☐ 1 Week ☐ 2 Week

*For RUSH TAT's Please Call Ahead to Confirm Lab Hours and Availability. Not all TAT options are valid for every test. Materials Science and IAQ TATs are in Business Days rather than Hours (i.e. 24 Hour = End of Next Business Day)

Asbestos

PCM - Air
☐ NIOSH 7400
☐ w/ 8hr. TWA

TEM– Air ☐ 4-4.5hr TAT (AHERA ONLY)
☐ AHERA 40 CFR, Part 763
☐ NIOSH 7402
☐ EPA Level II
☐ ISO 10312

TEM - Water
Fibers ≥10µm ☐ Waste ☐ Drinking
All Fiber Sizes ☐ Waste ☐ Drinking

PLM - Bulk
☐ PLM EPA 600/R-93/116
☐ PLM EPA NOB (<1%)
☐ NYS 198.1 (friable-NY)
☐ NYS 198.6 (non-friable-NY)
Point Count ☐ 400 (<0.25%) ☐ 1000 (<0.1%)
Point Count w/ Gravimetric ☐ 400 (<0.25%) ☐ 1000 (<0.1%)

TEM - Dust
☐ Microvac – ASTM D 5755
☐ Wipe-ASTM D6480

TEM - Bulk
☐ TEM EPA NOB
☐ NYS NOB 198.4 (non-friable-NY)
☐ Chatfield SOP

Soil/Rock/Vermiculite
☐ PLM CARB 435 – A (0.25% sensitivity)
☐ PLM CARB 435 – B (0.1% sensitivity)
☐ TEM CARB 435 – B (0.1% sensitivity)
☐ EPA Reg. 1 Screening Protocol (Qualitative)

Other:

Lead (Pb)

Flame Atomic Absorption
☐ Chips SW846-7000B or AOAC 974.02
☐ Soil SW846-7000B/7420
☐ Air NIOSH 7082
☐ Wastewater SM3111B or SW846-7000B/7420
☐ ASTM Wipe SW846-7000B/7420
☐ non ASTM Wipe SW846-7000B/7420
☐ TCLP SW846-1311/7420/SM 3111B

Graphite Furnace Atomic Absorption
☐ Soil SW846-7421 ☐ Wastewater EPA 200.9
☐ Air NIOSH 7105 ☐ Drinking Water EPA 200.9

ICP
☐ Air NIOSH 7300 Modified
☐ non ASTM Wipe SW846-6010B or C
☐ ASTM Wipe SW846-6010B or C
☐ Soil SW846-6010 B or C
☐ Waste Water SW846-6010B or C
☐ TCLP SW846-6010B or C

Other: ☐

Materials Science

☐ Common Particle ID (large particles)
☐ Full Particle ID (environmental dust)
☐ Basic Material ID (solids)
☐ Advanced Material ID
☐ Physical Testing (Tensile, Compression)
☐ Combustion-by-products (soot, char, etc.)
☐ X-Ray Fluorescence (elem. analysis)
☐ X-Ray Diffraction (Crystalline Part.)
☐ MMVF's (Fibrous glass, RCF's)
☐ Particle Size (sieve/microscopy/laser)
☐ Combustible Dust
☐ Petrographic Examination
Other: ☐

Microbiology

Wipe and Bulk Samples
☐ Mold & Fungi – Direct Examination
☐ Mold & Fungi Culture (Genus Only)
☐ Mold & Fungi Culture (Genus & Species)
☐ Bacterial Count & ID (Up to Three Types)
☐ Bacterial Count & ID (Up to Five Types)
☐ MRSA
☐ *Pseudomonas aeruginosa*

Water Samples
☐ Total Coliform & E.coli (P/A)
☐ Fecal Coliform (SM 9222D)
☐ Sewage Screen
☐ Heterotrophic Plate Count (SM 9215)

Air Samples
☒ Mold & Fungi (Spore Trap)
☐ Mold & Fungi Culture (Genus Only)
☐ Mold & Fungi (Genus & Species)
☐ Bacterial Culture & ID (Up to Three Types)
☐ Bacterial Culture & ID (Up to Five Types)
☐ Endotoxin Testing

Real Time Q-PCR (See Analytical Guide for Code)
Code:

Legionella
☐ Level 1 ☐ Level 2 ☐ Level 3 ☐ Level 4

Other: ☐ Air-O-Cell

IAQ

Nuisance Dust NIOSH ☐ 0500 ☐ 0600
Airborne Dust ☐ PM10 ☐ TSP
Silica Analysis: ☐ All Species
Silica Analysis – Single Species
☐ Alpha Quartz ☐ Cristobalite ☐ Tridymite
☐ HVAC Efficiency
☐ Carbon Black
☐ Airborne Oil Mist
Radon Testing: Call for Kit and COC
Other: ☐

****Comments/Special Instructions:** 152558330, 152558344, 152558346, 152558347, 152558343

Client Sample #'s		
Relinquished (Client):	**Date:** 3-31-10	**Total # of Samples:** 5
Received (Lab):	**Date:** 3-31-10	**Time:** 10:30
		Time: 10:25

Analysis Completed in Accordance with EMSL's Terms and Conditions located in the Analytical Price Guide

021001870

1870

EMSL ANALYTICAL, INC.

Chain of Custody

EMSL Order Number (Lab Use Only):

Sample #	Sample Description	Volume/Area (Air) HA # (Bulk)	Date/Time Sampled
15258330	Air-o-cell Living Room (1901 WS)	15L 10m	3/30/10
15258344	Air-o-cell Bedroom (1901 WS)	15L 10m	3/30/10
15258346	Air-o-cell Kitchen (1901 WS)	15L 10m	3/30/10
15258347	Air-o-cell Front (1901 WS)	15L 10m	3/30/10
15258343	Air-o-cell outside (1901 WS)	15L 10m	3/30/10

03-31-10

*Comments/Special Instructions:

Analysis Completed in Accordance with EMSL's Terms and Conditions located in the Analytical Price Guide

Asbestos • Lead • Environmental • Materials & Indoor Air Analysis

EMSL Analytical, Inc.
706 Gralin Street Kernersville, NC 27284
Phone: (336) 992-1025 Fax: (336) 992-4175 · Web: Email:greensborolab@emsl.com

Attn: Brian Webb
Environmental Intervention, LLC
4100 Burlington Road
Greensboro, NC 27405

Proj: 1901 WS

EMSL Order: 021001870
Customer ID: EINT78
Collected:
Received: 3/31/2010
Analyzed: 4/05/2010

Test Report: Air-O - Cell(™) Analysis of Fungal Spores & Particulates by Optical Microscopy (EMSL Method 05-TP-003)

Lab Sample Number:	021001870-0001			021001870-0002			021001870-0003		
Client Sample ID:	15258330			15258344			15258346		
Volume (L):	150			150			150		
Sample Location:	Living Room (1901 WS)			Bedroom (1901 WS)			Kitchen (1901 WS)		
Spore Types	**Raw Count**	**Count/m³**	**% of Total**	**Raw Count**	**Count/m³**	**% of Total**	**Raw Count**	**Count/m³**	**% of Tota**
Alternaria	-	-	-	-	-	-	-	-	-
Ascospores	4	84	28.5	2	42	10.3	6	127	4.1
Aspergillus/Penicillium	9	190	64.4	14	295	72.5	87	1840	59.5
Basidiospores	1	21	7.1	1	21	5.2	9	190	6.2
Bipolaris++	-	-	-	-	-	-	-	-	-
Chaetomium	-	-	-	-	-	-	-	-	-
Cladosporium	-	-	-	-	-	-	-	-	-
Curvularia	-	-	-	-	-	-	43	907	29.4
Epicoccum	-	-	-	-	-	-	-	-	-
Fusarium	-	-	-	1	21	5.2	-	-	-
Ganoderma	-	-	-	-	-	-	-	-	-
Myxomycetes++	-	-	-	-	-	-	-	-	-
Pithomyces	-	-	-	1*	7*	1.7	1	21	0.7
Rust	-	-	-	1	21	5.2	-	-	-
Scopulariopsis	-	-	-	-	-	-	-	-	-
Stachybotrys	-	-	-	-	-	-	-	-	-
Torula	-	-	-	-	-	-	-	-	-
Ulocladium	-	-	-	-	-	-	-	-	-
Unidentifiable Spores	-	-	-	-	-	-	-	-	-
Zygomycetes	-	-	-	-	-	-	-	-	-
Total Fungi	**14**	**295**	**100**	**20**	**407**	**100**	**146**	**3090**	**100**
Hyphal Fragment	-	-	-	-	-	-	-	-	-
Insect Fragment	-	-	-	-	-	-	-	-	-
Pollen	-	-	-	-	-	-	-	-	-
Analyt. Sensitivity 600x	-	21	-	-	21	-	-	21	-
Analyt. Sensitivity 300x	-	7*	-	-	7*	-	-	7*	-
Skin Fragments (1-4)	-	3	-	-	2	-	-	3	-
Fibrous Particulate (1-4)	-	1	-	-	1	-	-	1	-
Background (1-5)	-	2	-	-	2	-	-	3	-

Bipolaris++ = Bipolaris/Dreschlera/Exserohilum Myxomycetes++ = Myxomycetes/Periconia/Smut

No discernable field blank was submitted with this group of samples.

Samples analyzed by EMSL Analytical, Inc. 706 Gralin Street, KernersvilleNC

High levels of background particulate can obscure spores and other particulates leading to underestimation. Background levels of 5 indicate an overloading of background particulates, prohibiting accurate detection and quantification. Present = Spores detected on overloaded samples. Results are not blank corrected unless otherwise noted. The detection limit is equal to one spore, structure, pollen, fiber particle or insect fragment. "*" Denotes particles found at 300X. EMSL maintains liability limited to cost of analysis. This report relates only to the samples reported above and may not be reproduced, except in full, without written approval by EMSL. EMSL bears no responsibility for sample collection activities or analytical method limitations. Interpretation and use of test results are the responsibility of the client. Samples received in good condition unless otherwise noted.

Lee Plumley, Laboratory Manager
or Other Approved Signatory

For Information on the fungi listed in this report please visit the Resources section at www.emsl.com

EMSL Analytical, Inc.
706 Gralin Street Kernersville, NC 27284
Phone: (336) 992-1025 Fax: (336) 992-4175 Web: Email:greensborolab@emsl.com

Attn: Brian Webb
Environmental Intervention, LLC
4100 Burlington Road
Greensboro, NC 27405

Proj: 1901 WS

EMSL Order: 021001870
Customer ID: EINT78
Collected:
Received: 3/31/2010
Analyzed: 4/05/2010

Test Report: Air-O - Cell(™) Analysis of Fungal Spores & Particulates by Optical Microscopy (EMSL Method 05-TP-003)

Lab Sample Number:	021001870-0004			021001870-0005		
Client Sample ID:	15258347			15258343		
Volume (L):	150			150		
Sample Location:	Front (1901 WS)			Outside (1901 WS)		
Spore Types	**Raw Count**	**Count/m³**	**% of Total**	**Raw Count**	**Count/m³**	**% of Total**
Alternaria	-	-	-	-	-	-
Ascospores	14	295	8	1	21	5.9
Aspergillus/Penicillium	96	2030	54.7	4	84	23.5
Basidiospores	5	106	2.9	2	42	11.7
Bipolaris++	-	-	-	-	-	-
Chaetomium	-	-	-	-	-	-
Cladosporium	59	1240	33.4	7	148	41.3
Curvularia	-	-	-	-	-	-
Epicoccum	-	-	-	1	21	5.9
Fusarium	-	-	-	-	-	-
Ganoderma	-	-	-	-	-	-
Myxomycetes++	1	21	0.6	-	-	-
Pithomyces	1	21	0.6	-	-	-
Rust	-	-	-	-	-	-
Scopulariopsis	-	-	-	-	-	-
Stachybotrys	-	-	-	-	-	-
Torula	-	-	-	-	-	-
Ulocladium	-	-	-	-	-	-
Unidentifiable Spores	-	-	-	-	-	-
Zygomycetes	-	-	-	2	42	11.7
Total Fungi	**176**	**3710**	**100**	**17**	**358**	**100**
Hyphal Fragment	-	-	-	-	-	-
Insect Fragment	-	-	-	-	-	-
Pollen	-	-	-	-	-	-
Analyt. Sensitivity 600x	-	21	-	54	1140	-
Analyt. Sensitivity 300x	-	7*	-	-	21	-
Skin Fragments (1-4)	-	3	-	-	7*	-
Fibrous Particulate (1-4)	-	1	-	-	1	-
Background (1-5)	-	3	-	-	1	-
				-	1	-

Bipolaris++ = Bipolaris/Dreschlera/Exserohilum Myxomycetes++ = Myxomycetes/Periconia/Smut

No discernable field blank was submitted with this group of samples.

Samples analyzed by EMSL Analytical, Inc. 706 Gralin Street, KernersvilleNC

High levels of background particulate can obscure spores and other particulates leading to underestimation. Background levels of 5 indicate an overloading of background particulates, prohibiting accurate detection and quantification. Present = Spores detected on overloaded samples. Results are not blank corrected unless otherwise noted. The detection limit is equal to one spore, structure, pollen, fiber particle or insect fragment. * Denotes particles found at 300X. EMSL maintains liability to cost of analysis. This report relates only to the samples reported above and may not be reproduced, except in full, without written approval by EMSL. EMSL bears no responsibility for sample collection activities or analytical method limitations. Interpretation and use of test results are the responsibility of the client. Samples received in good condition unless otherwise noted.

Lee Plumley, Laboratory Manager
or Other Approved Signatory

For Information on the fungi listed in this report please visit the Resources section at www.emsl.com

1901 windy point ct winston salem

From: "eidebelkins@aol.com" <eidebe... Add to Contacts
To: gracenote23@att.net

Tue, April 20, 2010 1:30:52 PM

ENVIRONMENTAL INTERVENTION
4006 BURLINGTON RD
GREENSBORO NC 27405
336-382-9104

Environmental Intervention appreciates the opportunity to work with you on the above property. Per your request an inspection of the crawl space area and the inside of the home was completed. Also, per your request Air Testing were completed and taken to EMSL Lab for results to be determined. We will offer to you our findings, our recommendations and our proposed cost.

FINDINGS:

During the inspection of the crawl space area moderate mold growth was noted on the sub floor and joist area. It is our visual, the growth is due to past ground water intrusion. The foundation vents are at ground level which will allow water to enter the crawl space.

During the inspection of the house there was no visible mold noted. There were several issues that could be causing hidden mold growth. These areas are the sub floor in the living area has separated and allows air flow from the crawl space to enter the home. There are several dead plants which can throw off mold spores. The air circulation is very low due to the home not being lived in which also gives a perfect home for mold growth.

The Air Test results were received from EMSL Labs with elevated counts in the front room and the kitchen area. (The results are enclosed).

RECOMMENDATIONS:

Environmental Intervention will always recommend the source of the problem be corrected before the mold can be successfully remediated. We recommend the entire crawl space be remediated which will include, remove any and all insulation, vapor barrier, debris from the area. Hepa vacuum all sub floor, joist and bands. Bio Spray and scrub clean all sub floor, joist and bands. After the spray is dry hepa vacuum the 2nd. time. We will install 6 mil plastic with 100% ground coverage vapor barrier. We will install insulation if requested.

We also recommend the sub floor be corrected by a licensed contractor.

Also, we recommend vent wells to be dug and installed with gravel added on all ground level foundation vents, to help prevent water intrusion through to the crawl space area.

We recommend the inside of the house have a good general cleaning and wipe down with a microbial cleaner. All dead plants need to be removed and all debris such as papers and boxes need to be removed. During this cleaning we need to circulate air and re-test after the cleaning process.

Environmental Intervention stands behind our work and will guarantee our treatment after we have successfully received clear Air Testing from EMSL Labs.

Please feel free to contact us with any questions or concerns.

Exhibit 5

Messick Properties Group
P.O. Box 24982
Winston-Salem, NC 27114-4982

CPU U.S. POSTAGE
PB 1P 000
3656354
FCMP
0005
$ 6.66⁰
MAILED MAR 25 2010
27106

7008 2810 0000 9213 3383

Denette Staley
1855 Lake Drive
Winston-Salem, NC 27127

Staley
3-26-10

FIRST CLASS

RETURN RECEIPT REQUESTED

FORENSIC ENGINEERING INCORPORATED
Professional Engineers / Consultants

Mark envelope sheet

NOVEMBER 19, 2009

REPORT OF INVESTIGATION PREPARED FOR:

MR. ANDREW JOHNSON
TRAVELERS INSURANCE
POST OFFICE BOX 24844
WINSTON-SALEM, NORTH CAROLINA 27114

SUBJECT:	**RESIDENTIAL WATER INTRUSION**
INSURED:	**CROSSWINDS HOMEOWNERS ASSOCIATIOI**
LOSS LOCATION:	**UNIT 1901, WINDY POINT COURT** **WINSTON-SALEM, NORTH CAROLINA 27127**
CLAIM NUMBER:	**A6Q7766**
DATE OF LOSS:	**JULY 27, 2009**
FEI FILE NUMBER:	**9192**

REPORT PREPARED BY:

NORTH CAROLINA PROFESSIONAL SEAL 7283 ENGINEER THOMAS W. GRIFFIN

11/19/09

TOM GRIFFIN, P.E.

TG/sw

1334 Ashley Square ▪ Winston-Salem ▪ North Carolina ▪ 27103
Tel: 336-659-2442 ▪ Fax: 336-659-2445
E-mail: tgriffin@feiwebsite.com
Website: http://www.feiwebsite.com

ASSIGNMENT:

On November 12, 2009, Andrew Johnson of Travelers Insurance contacted Forensic Engineering Incorporated (FEI) with a brief description of this assignment. Mr. Johnson requested that we determine the cause and origin of fungal growth in the crawl space (i.e. mold and/or mildew) of the subject residence. Microbial assessment was not part of this assignment.

CONCLUSION:

The fungal growth observed in the crawl space has resulted from long-term water intrusion through the block foundation.

DESCRIPTION:

The subject structure is a one-story, wood-framed, attached condominium with brick veneer and vinyl siding on the exterior walls and an asphalt composition, shingle roof. The unit is reported to have been built in 1985 and owned by Denette Staley since 2000.

BACKGROUND:

A site visit was conducted November 16, 2009, by Tom Griffin, P.E. at which time a visual and photographic survey was made. Mr. Griffin was accompanied during the site visit by the homeowner's mother, Donna Staley, and the property manager, Grey Harper.

During the investigation, accessible elements of the exterior facade, the affected interior habitable space, and the crawl space were observed. No destructive or intrusive testing was performed.

The homeowner's mother stated that the unit had fungal growth in the crawl space three years ago. The fungal growth was supposedly remediated, but no final inspection report was ever given to the homeowner. The homeowner recently began to have health problems, and she is reported to have fungal growth in her blood. Ms. Staley's mother indicated that Environmental Solutions Group of Greensboro inspected the home three years ago and again this past summer. They found mold spore counts inside the residence that were reported to be higher than the outside potentially causing health issues. She further stated that a plumber recently checked the condominium and found no leaks.

FINDINGS:

The following observations were made during the investigation with captioned photographs included within this report.

Our investigation did not reveal any observed fungal growth inside the unit. It has not been occupied since September 2009, but the HVAC has been set at approximately 68 degrees Fahrenheit to reduce the possibility of fungal growth. We observed a light dusting of fungal growth near the crawl space access, but there was more growth at the east foundation of the unit.

We observed efflorescence from water intrusion along the north and east walls at the northeast corner. There is slight water intrusion along the east wall and more intrusion with efflorescence at the southeast corner. We have had long-term water intrusion from the northeast corner to the southeast corner with more occurring at the corners.

The drainpipe in the yard for the downspout at the northeast corner was completely stopped up with debris. The gutters were full of debris, and I would assume that the drain for the southeast corner downspout was also stopped up.

Along the east wall, there is a retaining wall approximately 13 feet from the unit. The ground slopes down from the retaining wall to a point three feet from the wall where we have the bottom of a slight swell. We then go back upslope for approximately three feet to a ridge, which forms the swell. We then slope down to the foundation. With the yard graded as observed, some water will follow the slight swell but some will move toward the foundation.

The fungal growth in the crawl space has resulted from long-term water intrusion through the block foundation of the home. No openings or holes were found that would allow surface water to flow directly into the crawl space. I believe most of the moisture issues are occurring at the northeast and southeast corners from the downspout drains being stopped up and the gutters overflowing.

INVESTIGATION STATUS:

As of this writing, our assignment has been completed.

Enclosures: Photographs (12)
(Note: Additional photos and sketches will be stored with our file.)



Photograph 1: Unit 1901, Windy Point Court, Winston-Salem, North Carolina.



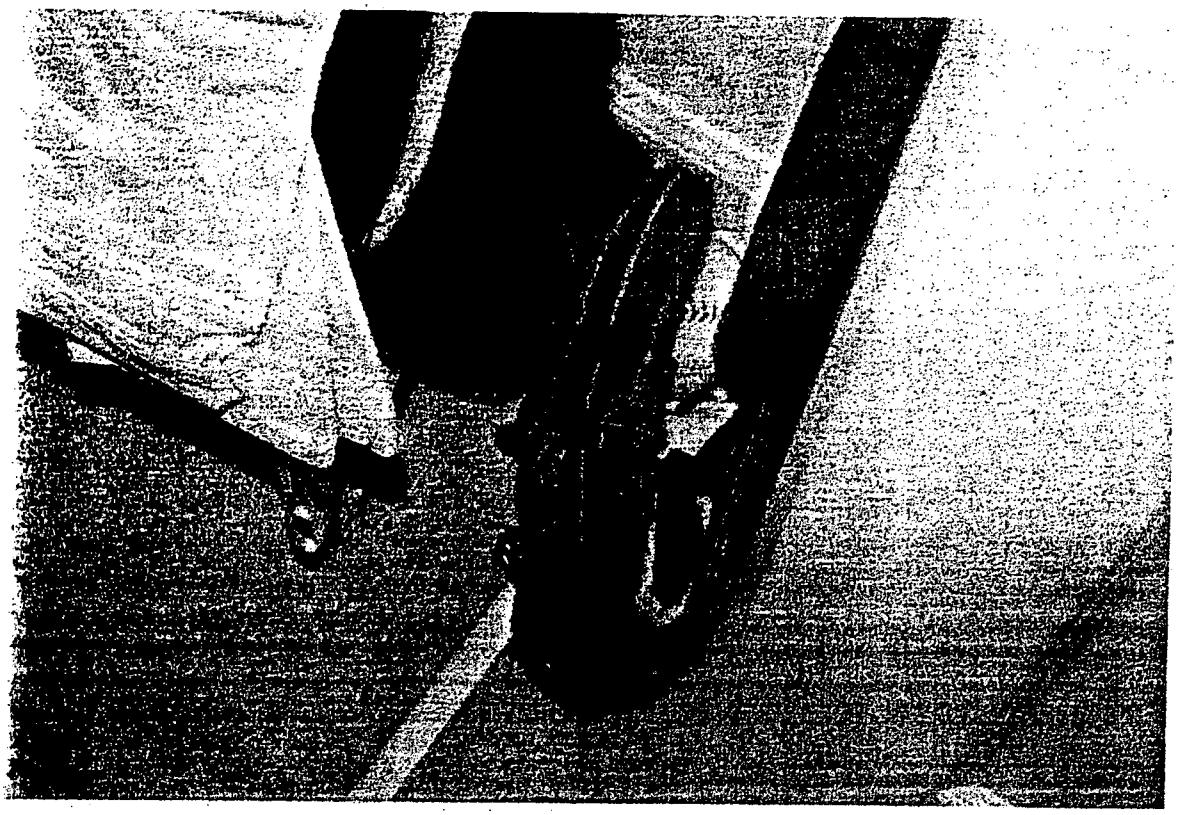
Photograph 2: View of area on east side of subject unit with slight swell approximately 10 feet from unit.



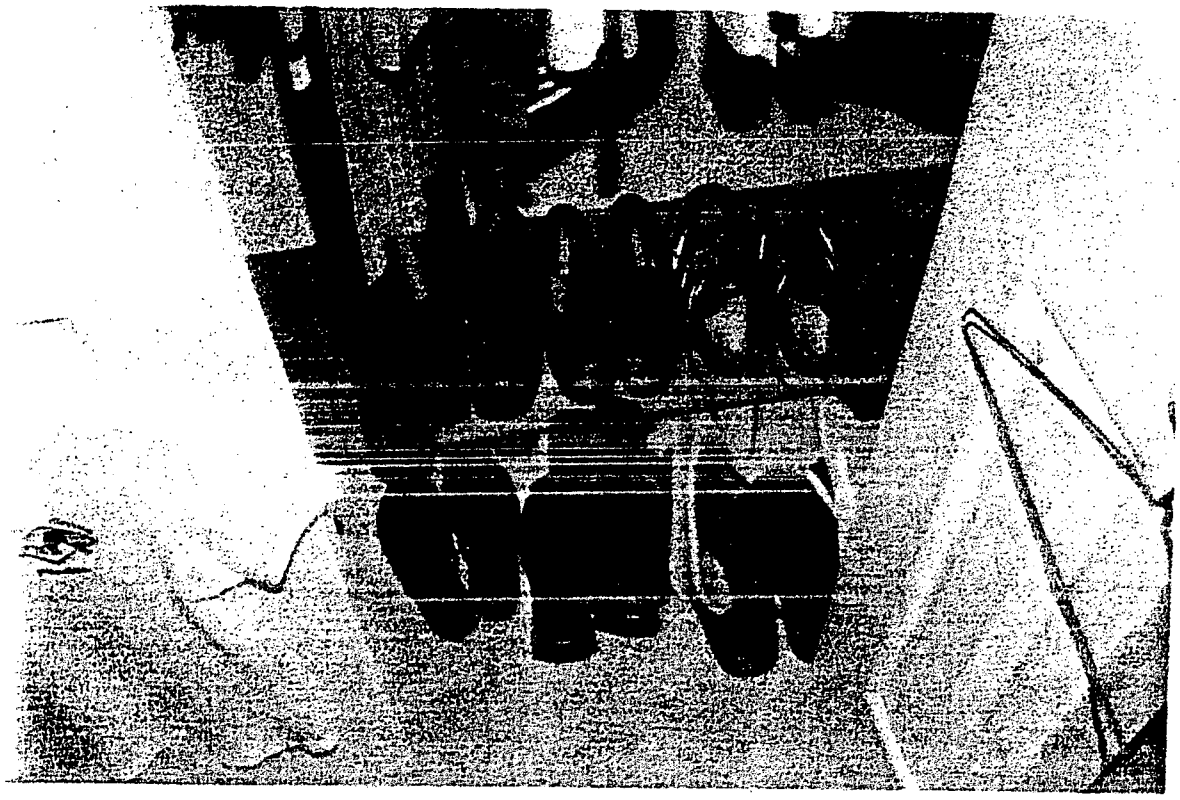
Photograph 3: View of downspout at northeast corner of unit with material observed, which completely clogged drainpipe.



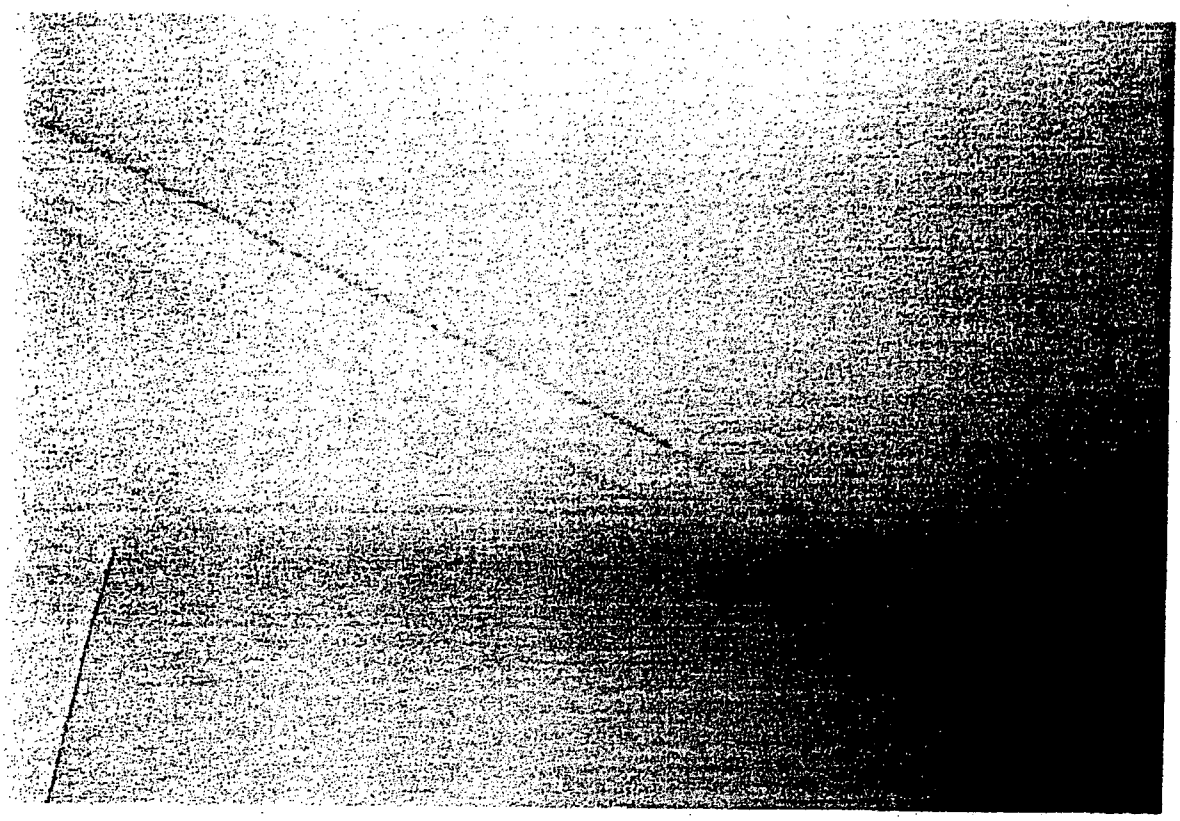
Photograph 4: View of possible water leak on ceiling between dining room and living room.



Photograph 5: Leather glove in closet with no visible fungal growth.



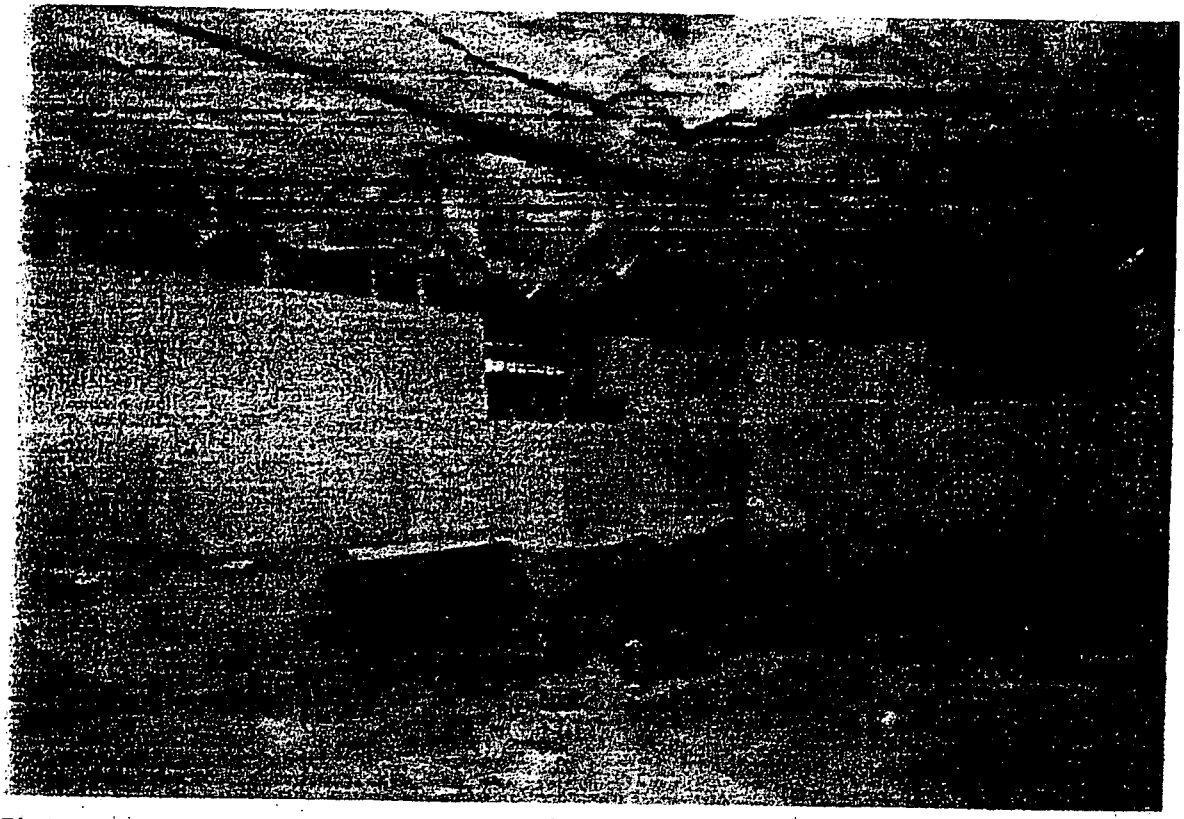
Photograph 6: View of shoes in second closet with no visible fungal growth.



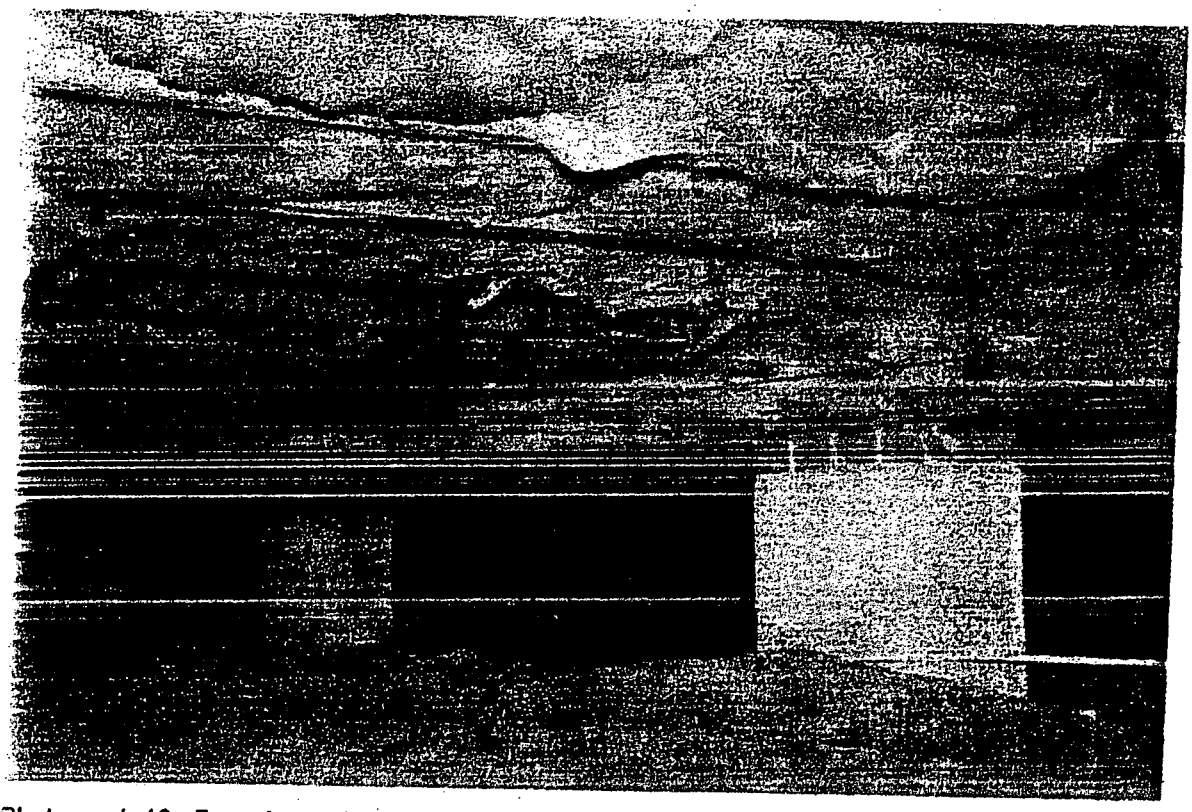
Photograph 7: Separation of crown molding in master bedroom.



Photograph 8: Light fungal growth near access door.



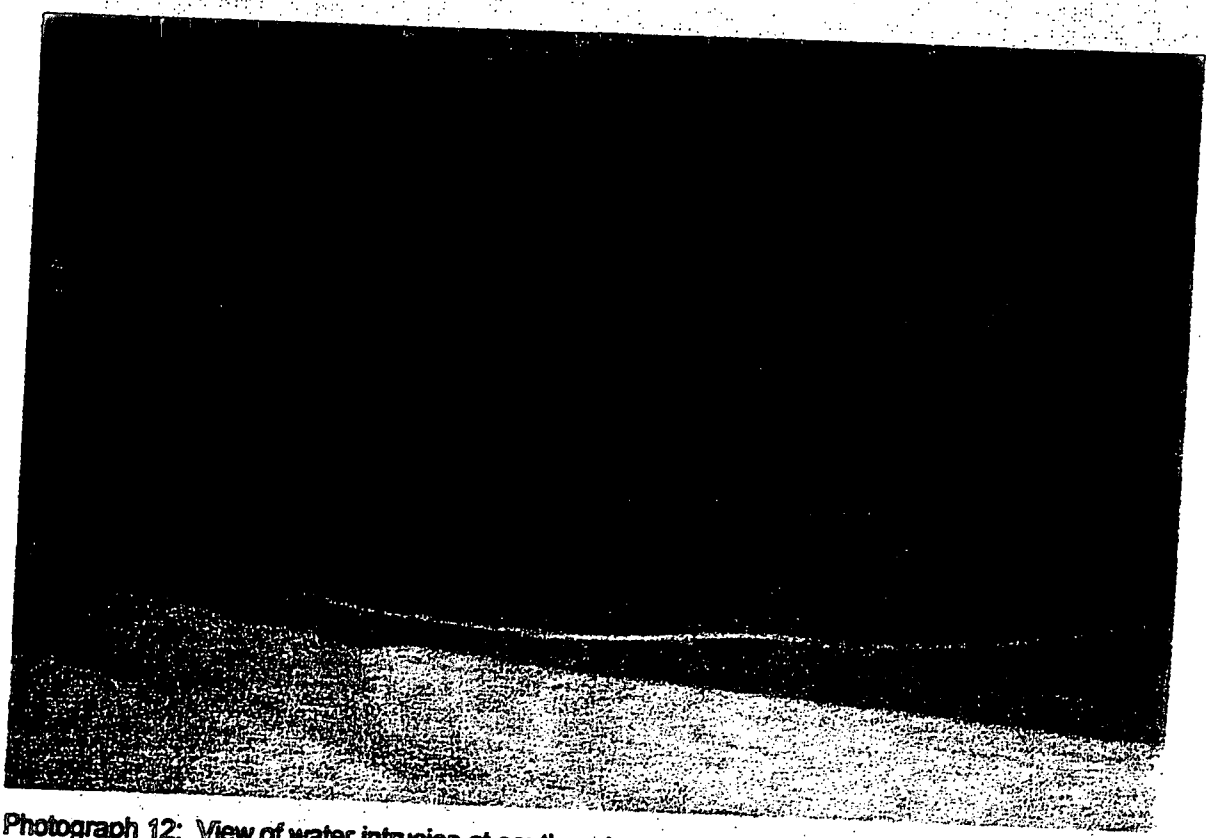
Photograph 9: Northeast foundation with efflorescence from water intrusion.



Photograph 10: Fungal growth on floor under living room.



Photograph 11: View of slight water intrusion along east foundation.



Photograph 12: View of water intrusion at southeast corner.

Exhibit 6

PMi™
PEST MANAGEMENT SYSTEMS INC.
We Put Pests To Rest.

Pest Management Systems Inc.

July 23, 2010

Ms. Denette Staley
1901 Windy Point Ct
Winston Salem, NC 27127

Ref: Mold inspection

Dear Denette:
At your request, I visually inspected your home for mold and issues supporting the growth of mold. No mold samples were taken during my inspection and this report makes no representation as to the species or levels of toxicity. Previous sampling studies were presented which aided and directed my inspection process.

The first concern in this inspection is for the safety and well being of the homeowner and others who may abide in this home. It is my understanding that you vacated this house upon the recommendation of your physician who confirms your illness is caused by mold. Per our interview, you have returned only for short visits and only when wearing personal protective equipment such as respirators and rubber gloves.

Pervious sampling studies have indicated a significant presence of toxic molds within the walls of this home. Previous studies have indicated an elevated concentration of mold inside the living space of the house. Additional tape sampling in the crawl space also confirmed the presence of toxic mold.

My observations are as follows:

1. The grade of this property is from right to left as viewed from the street. The right side has a wooden retaining which is roughly four feet high and extends from the front yard to a point beyond the right rear of the house.
2. Downspout drainage at the front right of the house is achieved by adding S&D PVC pipe on top of the ground and angled so as to deliver the water across the front of the yard and on to the other units of this building. The previous downspout drain line was abandoned when this line was attached. Presumably, this S&D PVC line is only a temporary repair.
3. Downspout drainage on the right rear of the house includes a short corrugated extension and is only marginally successful.
4. This is a conventionally vented crawl space which requires adequate ventilation via foundation vents. The foundation vents along the right side of the house are at or below grade level. Obviously there are no foundation vents on the left side.
5. The interior of the house is as it was at the time the house was vacated. Since previous studies have confirmed elevated toxic mold inside the house, it must be assumed the contents of the house is also contaminated with mold. Proper safety practices must be exercised whenever entering this structure.

Residential Commercial Industrial Pest Management Systems Inc.



This is a view of the front of the house and shows the grade of the yard to be from right to left.



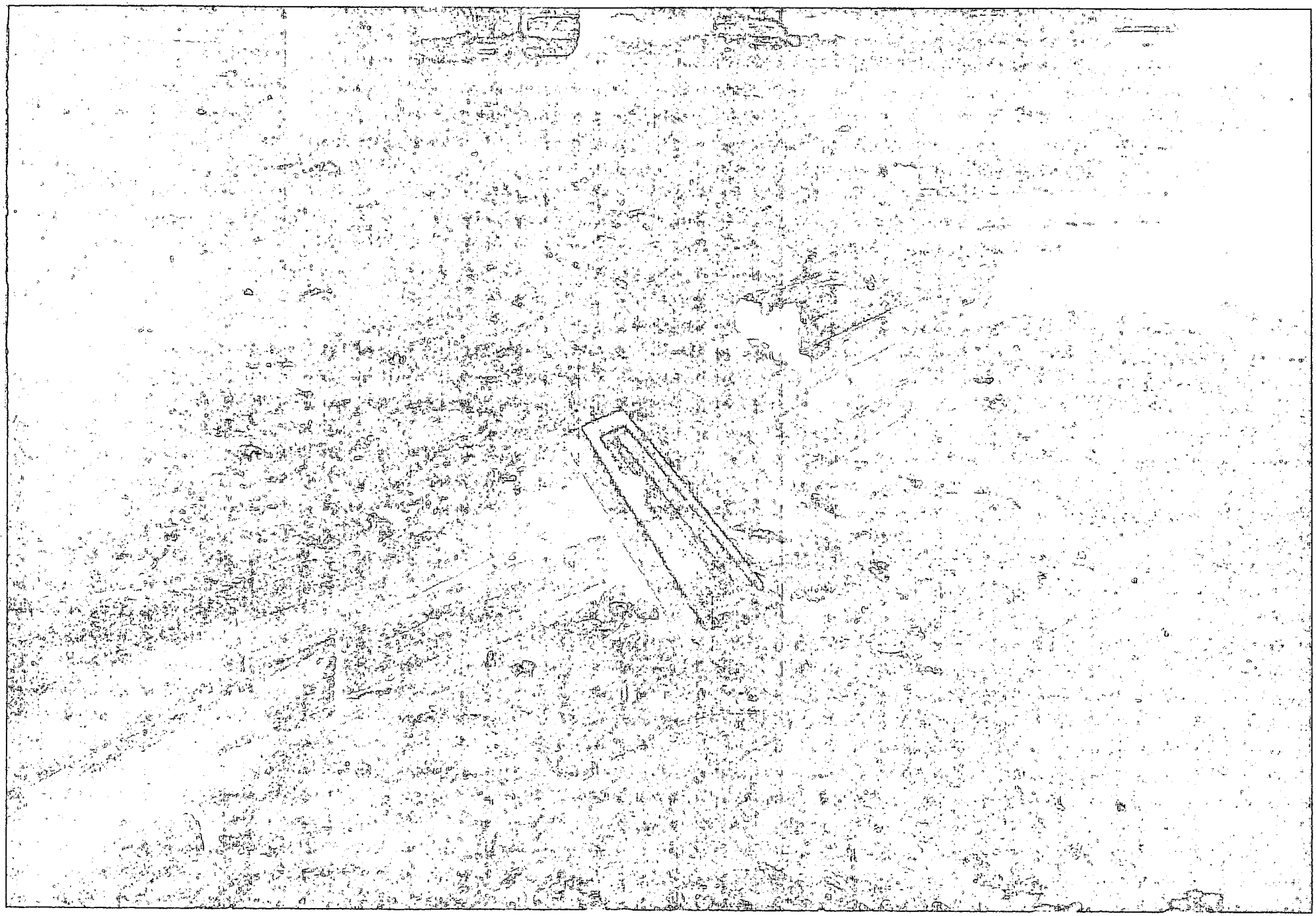
This is a picture of "temporary" downspout drainage at the right front. This temporary line replaces the old corrugated line.



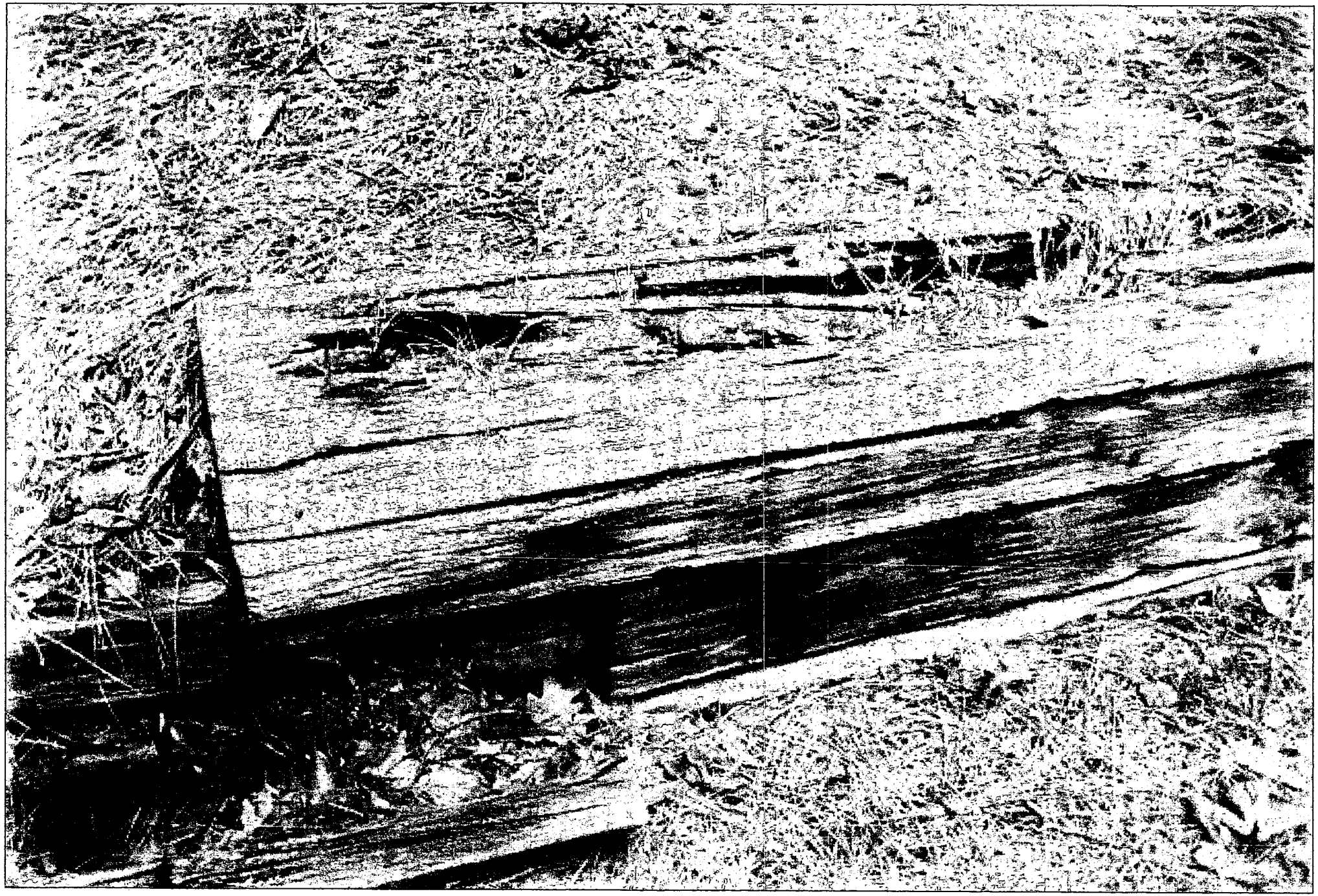
The front temporary downspout extention directs water to flow along the fronts of all units.



This retaining wall is located along the right side of the house. This purpose of this picture is to show the radical grade change along the right side. There was no evidence of drainage behind the wall.



The wooden retaining wall is rotted, and shows signs of termites. This wall should be replaced.



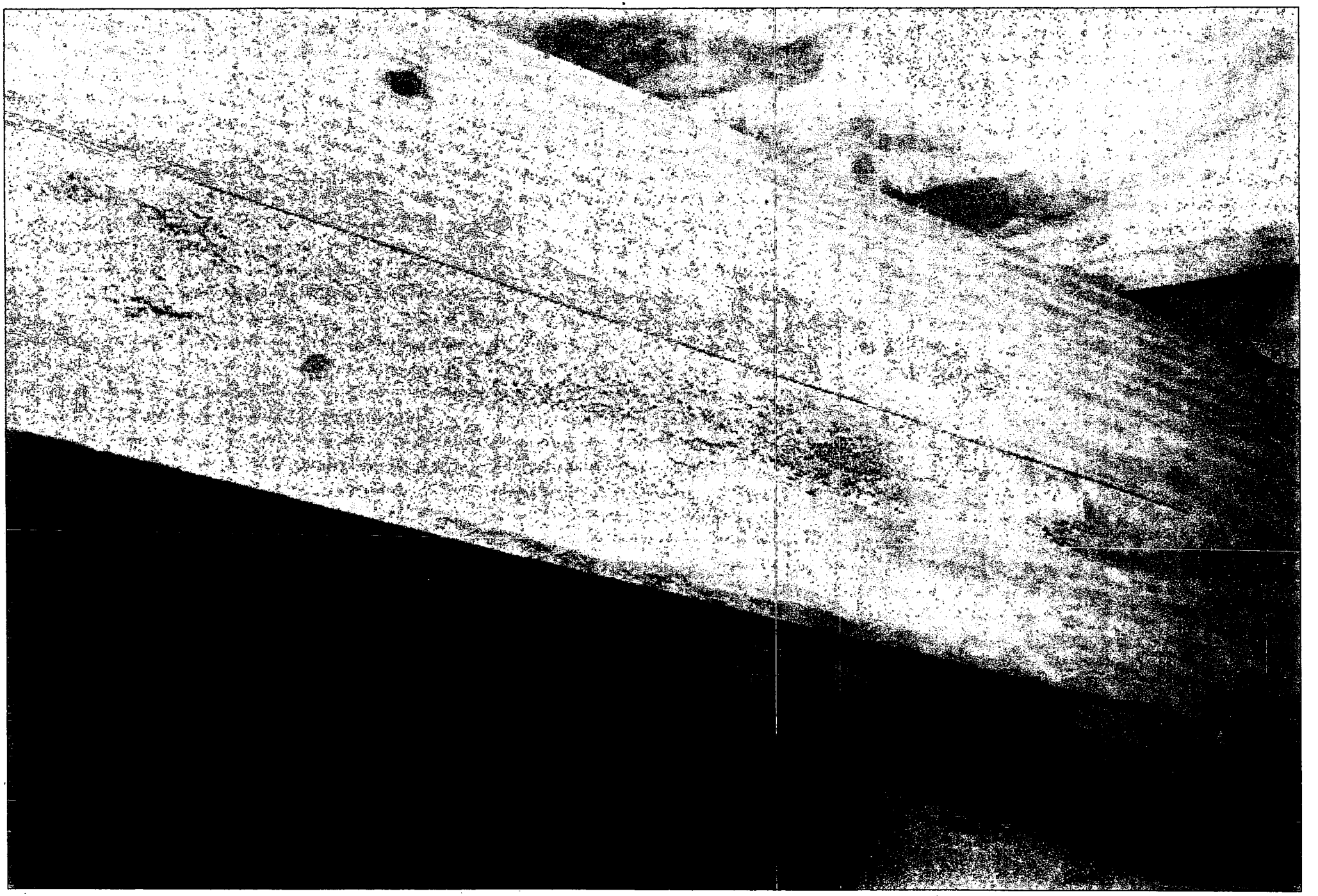
This is a close up view of the damage found to the retaining wall.



This is another temporary downspout drain line.



This is a picture of the bottom of a triple joist. This picture shows accumulated mold.



This is a better view of the mold.

DOCUMENT #6

Exhibit 7

HICKS LANDSCAPING INC
2942 Eddystone Lane
Winston-Salem, NC 27103
336 765 0201
336 765 6543 Fax

Date: 10-2-09
Contact: Denette Staley
Address: 1901 Windy Point Ct W-S NC 27103
Phone: 650-1845
Mobile: 813-0734
Fax:

Job Name: Home
Job Location: 1901 Windy Point Ct W-S NC 27127
Architect:
Date of Plans:

- Water is getting in front & Rear of home due to grade is sloped to foundation
- Gutters & gutter downspouts are stopped up
- 4" corrigated pipes are stopped up, not installed properley
- French drain on east side is allowing water a direct route to crawl space. The french drain can be removed and backfilled, regrade east side as long as there are no utility conflict
- All grades must be sloped away from foundation
- Maintence of gutters and down spouts would help

X Work to be done

- Clean gutters & downspouts
- Install appox 80 – 4" PVC pipe & fittings, trenching
- Remove french drain, backfill & compact
- Backfill foundation, under deck and remove leaves
- Replace pine needles
- Reseed, fertilizer & straw all disturbed areas
- 3-4 yards dirt/Trucking

- 30 years experince / NCNA / ICPI certified / Jeff Hicks

Exhibit 8

CROSSWINDS TOWNHOME ASSOCIATION, INC.

2918 Windy Ridge Drive
Winston-Salem, NC 27127

Board of Directors
April 26, 2010

A regular meeting of the Crosswinds Townhome Association, Inc Board of Directors was held on April 26, 2010 at 6:30 pm, at Georgia Taylor Recreation Center, Clemmonsville Road, Winston-Salem, NC to conduct the business of the Association.

Board Members Present: Peyton Wright, Brad Budris, Dottie Jones, Walter Carmichael, Leesa Robbins, Victor McGlamery, Gray Harper – Property Manager
Homeowners Present: Danette Staley, Kathy Grohs, Bill Thorenz

Homeowner Concerns:

Bill Thorenz – Is upset that the tenants at 2736 Windy crossing continue to violate the parking rules. He provided photos of these violations. He suggested a written warning be sent to the tenants and the homeowner, then begin fining them for future violations. In addition, this past Sunday, they were doing fender/body repair work to a vehicle in the parking lot. This violates the ability to live with quiet enjoyment. Lastly, Bill is upset that pet owners are allowing their animals to roam and urinate on the grass, killing it in several spots. The Board agreed to send letters to the tenants at 2736 along with the owner of that unit. In addition, the Board agreed to send letters to the pet policy violators as warnings, to be followed up by fines for any future violations.

Danette Staley – Wanted an update on her unit. We relayed that we had re-routed her downspout and drainage pipes above ground rather than underground, hoping this would allow better drainage and provide us the ability to more easily monitor the drainage. She wanted to know when the landscaping at the side of her home would be worked on. We told her that Larmore (our landscaping vendor) had been out to assess the site and did not find any reason to make any adjustments to the landscaping at the side of her home at this time.

Dixie Page – The tree on the hill behind her home is dead and needs to be removed. The Board assured her that we are going to have it removed and that Gray is already in the process of receiving quotes to do so.

Board Meeting

Gray to get with Larmore and have them sent a letter to Danette confirming the assessment of the landscaping at the side of her home. Also to send letter to her reminding her (again) that all future communications regarding her "mold claim" needs to be addressed with the insurance company only. The Board will not continue to address this same issue at future Board meetings – send this letter certified.

Exhibit 9

Larmore
Landscape
Associates, Inc.

2581 Landmark Drive
Winston-Salem, NC
27103-6716

Consultation
Design
Installation
Irrigation
Hardscape
Maintenance

April 29, 2010

Gray Harper
Messick Properties Group, Inc.
Re: Windy Ridge

Dear Gray,

The problem with moisture is most likely caused by clogged 4" corrugated drain pipe without sufficient fall for drainage.

The solution would be to redirect gutter water to front yard, remove existing 4" corrugated pipe and replace with pcv, s&d pipe with drain holes and install with filter fabric and washed stone. Add soil to elevate against foundation. Price: 45-50' lineal feet of 4" s&d pipe with filter fabric and washed stone. Add soil as needed, clean site as needed. $725.00

Sincerely.

Bill Larmore

Telephone (336) 765-6340 – E-mail Larmoreland@bellsouth.net
W. T. Larmore, Reg. Landscape Contractor #537, Pesticide #26-25528
Robin W. Coffey, Landscape Contractor #584
Noah W. Larmore, Irrigation # BFPACT0183
Pam Ripsom, Maintenance Pesticide # 026-25529
Makel Wimmer, Landscape Contractor#1621,
Irrigation #155, Pesticide #026-25523

Exhibit 10

K. Gray Harper

From: "Brad Budris" <bbbhb@sbcglobal.net>
To: "Peyton Wright" <pewright@phoa.org>; "K. Gray Harper" <gray@messickproperties.com>; "Derek Godfrey" <cdgodfrey@novanthealth.org>; "Dottie Jones" <dojones@wfubmc.edu>; "Leesa Robbins" <lallen349@triad.rr.com>; "Mcglamery, Victor S" <vsmcglamery@novanthealth.org>; "Walter Carmichael" <wcarmichael@triad.rr.com>
Sent: Friday, February 05, 2010 4:11 PM
Subject: Re: Staley's Unit

(2) I agree, I think we need to discuss this as a Board. I would be concerned about doing anything, as in my mind that is admitting guilt. At what point is the home owner responsible for discovery compared to the Board crawling under each and every unit.
Has Staley filed suit?
Maybe we should run this by the Gal who is reviewing our covenants and bylaws. For what ever reason I have gotten the opinion that Schramm seems to be on the negative side of this, I'd like a second opinion. (ESPECIALLY since Schramm didn't feel good enough to advise us regarding the covenants.)

From: Peyton Wright
Sent: Friday, February 05, 2010 1:39 PM
To: K. Gray Harper ; Brad Budris ; Derek Godfrey ; Dottie Jones ; Leesa Robbins ; Mcglamery, Victor S ; Walter Carmichael
Subject: RE: Staley's Unit

Maybe we need a call meeting to talk about this. I like to follow lawyer's recommendations.

Peyton Wright, RN, BSN, OCN
Nurse Manager
Piedmont Hematology Oncology Associates, PLLC
1010 Bethesda Court
Winston-Salem, N.C. 27103
phone-1-336-277-8886
email-pewright@phoa.org

From: K. Gray Harper [mailto:gray@messickproperties.com]
Sent: Friday, February 05, 2010 1:32 PM
To: Brad Budris; Derek Godfrey; Dottie Jones; Leesa Robbins; Mcglamery, Victor S; Peyton Wright; Walter Carmichael
Subject: Staley's Unit

Hello All,

(1) I was talking to John Schramm yesterday and ran the Staley issue by him. John feels it would be in the best interest of the Board to do something due to the way the engineer's report was written. In the report it say "long-term water intrusion" and also says "gutters were stopped up." My thoughts on the gutters stopped up are waiting on all the leaves to fall before cleaning them out. Court might see it that way or might not. The downspots that are buried are a problem for us. If they are stopped up, it is the our job to find this out. I would say 80% are stopped up due to being buried for so long.

John said since the report says no findings inside, we should get someone to look at going under the home and to taken care of that only at this time. He thinks if we did that, we would be doing what he feels would be our part to make things right.

How does the Board feel about this?

K. Gray Harper
Messick Properties Group Inc.
336-727-8600 Ext. 107
336-727-8814 Fax
gray@messickproperties.com

AH #5
10-20-10
Mr. Lou DeVita

INTRO

- Representatives Weiss & Mc Gee, Members of the Committee & Staff

- Thank You for Inviting Frank Wiedman, and I to present our experience under Declarant control

- I'm Lou De Vita, & I appear today as a Property Owner in a planned community

- In the time allotted we will cover portions of the 5 page document submitted earlier to Martha Walston.

- We hope you had the opportunity to review the entire document

Community Background

•What do we look like?

- Started1985, Planned for 5000 dwelling units
- 1600 privately owned units to date
- 5 Commercial entities of Declarant operate on the site
- Community is in the Declarant Control period

•Governing Documents describe end of control period;

- When Declarant owns less then 20 lots…
- On January 1, 2024(extended twice thus far)
- When it is reasonable at sole discretion of Declarant...

•What's going to happen?

- Given the above and the current content of 47F we'll be under Declarant control for at least 50 years!!!

•Was This the Intended Goal of Our Current Legislation??

Living Under Declarant Control

For the First 25 Years of Our HOA we have:

- No Vote Period!
- Closed HOA Board Meetings
- Member Best Interest not a Primary Concern of HOA Board
- No Response to Member Concerns/ Complaints
- No Right to Refuse Acceptance of Maintenance Responsibility
- No Member meetings (started in 2005)
- No Communication (newsletter 2005)
- No Administrative & Operational Records (started 2005)

Why Does the Declarant Want to Keep Total Control?

- Control Content of Governing Documents
- Control Make-up & Balance of HOA Board
- Control over Financial & Other Resources of the HOA
- Financial Advantage & Flexibility
- Lack of Accountability/ Documentation
- Transfer Maintenance Costs to HOA Without Due Diligence
- Directly Impact Profitability of Other Holdings

Using/Abusing the HOA

1998 HUD Document says:

"All Streets belong to the Town & are maintained using municipal tax dollars."

- Not True!
- Not built to spec by Declarant, town would not accept them
- Roads Assigned by Declarant to Declarant controlled HOA for maintenance
- Eventually HOA member $$ will pay to bring to roads to spec

"Beach Lots Deeded to HOA"

- Not true!
- These lots and all other Common areas **NOT** deeded to HOA were collateral for a loan to the Declarant Corporation 2006
- An action specifically prohibited by the Covenants the Declarant authored
- Matter never brought before the membership by Declarant controlled HOA board

Property Owners Deserve Equality Under the Law

Strengthen 47F to Include the following:

- HOA Board Meetings Open to the Members
  - –Statutes Florida 720, Virginia 55 & NC Open meetings law
- Formal Common Area Transfer Required Before HOA Funds Expended
  - –Statutes NC 47C-2-107 & Florida 720
- Protect Against Conflicts of Interest of the Declarant
- Especially When Commercial Entities Operate in the Community
  - –Statute NC 55A "Conflicts of Interest"
- Define a Transition Process from Declarant Control of HOA Board & Governing Documents within some Specified Time
  - –Statutes 47C-3-103, 47C-3-105, Minnesota 515B & Oregon 94.6
- Establish a Mechanism or Assign Governmental Responsibility to Resolve Disputes
  - –Statute Florida 720

Individual Property Owners Need Your Help!!!!

- **We come to Raleigh because we can't solve inherent problems.**
- **We need a systemic change.**

- You have the opportunity to create "Model Legislation"
- Protecting the rights of all stakeholders of planned communities
- We encourage you to craft & enact an improved version of 47F by:

•Adopting and Integrating:
•Best Practice Solutions in Use by Others
•Recommendations Presented During Hearings
•Your New Ideas and Those of Your Staffs

- We ask that you make compliance mandatory:

Declarant Control & Proposed 47F Improvements

Section 1, History & Current Status

A1. Our planned community, was started in 1985, with a dwelling unit capacity of 5000 units, in addition to the residential community the developer has 5 commercial ventures which operate within the boundaries of the community. Today, we have about 1600 units privately owned. Within the Governing Documents the Declarant excludes any property owned by him from assessments and restrictions of the Covenants.

A2. Our Governing Documents define the end of the Declarant control period as the occurrence of one of the following events:

- "When the Declarant owns less than twenty (20) units....."
- "On January 1, 2024 (extended twice by Declarant thus far)"
- "When it is reasonable at the sole discretion of the Declarant....."

A3. Given the previous facts, and the current content of 47F, it's conceivable that when my property is owned by my grand children the community will still be in the Declarant control period.

B1. From 1985 until 2004 the Declarant Board of Directors and our HOA called the Master Association (MA) Board of Directors were one and the same. No annual member meetings were held; the members had no formal communication other than the letter which set the annual dues. The members had zero visibility into the operations and financial matters of the MA. Thus the crying need that Board meetings of the HOA be open to the members from the first day of it's creation. The policy of our board complies with 47F in that homeowners must have an approved request to address the board before the board meeting they are then asked to leave at the start of the formal board (business) meeting, in essence holding a "closed" meeting. This desire for "secrecy" went so far that at one point the declarant wanted the non-corporate members to sign a non-disclosure agreement, as reported in one of the recent meeting minutes. The Declarant corporation controls and operates the MA for it's benefit, and as long as the annual- dues remain low, few homeowners care. This is akin to "Taxation Without Representation"

C1. Currently our (MA) has a board consists of 7 members, 4 corporate employees, one being one of the four owners of the corporation, and 3 member property owners appointed by the corporation. This occurred in 2004 after a small group of property owners formally requested the financial and administrative records of the MA. It took the then MA Board 5 months to deliver the financial records Income & Expense Accounts and Balance sheet information, however no minutes of meetings, no studies and decisions to establish reserves, no usage and cost allocation agreements with non–member entities were delivered, probably because they did not exist.

D1. Why does the Declarant want be in total control? He possesses sole control over the content of the Governing Documents, the make-up of the MA board of directors which is supposed to represent the member's best interest and the financial and physical resources of the MA. In a purely residential community the position of control without accountability gives him significant financial advantage and flexibility because it allows him to utilize the same vendors and operate without written agreements or contracts between himself and the MA. In a mixed residential and commercial community the financial advantage is substantially magnified, the position of control enables him to improve the financial profitability of all his holdings in the community. There have been and continue to be many instances where MA $$$ have been used for corporate benefit: these pose serious moral, legal and ethical issues.

E1. The only common areas deeded over to the MA are two member facilities and pools and a portion of the beach parking lot which just occurred this year although HUD documents issued to prospective buyers in 1998 indicated that the entire beach lot was deeded to the MA and all roads were town roads and maintained using municipal tax dollars. The Governing Documents require the MA to maintain the common areas, ***there is no requirement in our documents or the current law that requires the dedication or deeding these areas before MA funds are expended to maintain them.*** The Commercial entities of the Declarant make unrestricted use of these common areas without a usage agreement with the MA and without contributing to the maintenance and upkeep of these areas.

- Landscaping and maintenance of common areas costs the MA (>$200K per year)
- The Declarant has taken back common areas maintained by the MA in order to relocate a roadway so that they could create a contiguous parcel large enough to build a condominium complex .
- MA repaved and widened a non-town road which is subsequently taken back under Declarant control without any financial consideration (> $150K)
- The Declarant has also pledge the ***common areas*** as collateral against a loan for his Corporation in 2006. Our Governing documents specifically prohibit such an action without the consent of 80% of the unit owners. The Declarant controlled MA board never brought this action before the members.
- Declarant advertises their commercial businesses and makes other use of common areas whose maintenance is paid for with MA dollars. Commercial ventures include 3 golf courses, conference center, restaurant, real estate sales, and they have a third party running the resort rental business they formerly operated.
- Tennis courts at member facilities were used as an amenity for resort rental customers of the corporation , until they required major repairs, to which the corporation contributed nothing, MA expended (>$70K) for repair

F1. Attempts to rectify inequities directly with MA board are either ignored, or side stepped. We have gone the route of both letters and petitions signed by hundreds of members. This is an example of moral and ethical abuse.

F2. Letter written to NC Attorney General, response was to hire a lawyer and litigate. We feel the way the current statute exists, there is small chance of success.

G1. Recently the corporation attempted to monopolize the real estate re-sale market by having the MA board issue a rule forbidding the placement of signs on properties available for sale by outside agencies and the property owners themselves. There is not a single property owner on the MA sign committee, in fact the corporate president sits on this committee. When threatened by property owners and independent realtors with a letter to the state AG, this was resolved in a fair and equitable manor. (restraint of trade issue)

H1. As long as the laws allow the Declarant to have total control there will always be abuses of varying degrees, it's human nature to put your best interest above those of others. The law needs to be amended to protect the rights of all the stake holders equally.

Section 2, Options for solving current Problems (Legislative Changes)

A1. We feel that strengthening 47F in the areas mentioned below could rectify most of the inequities we have experienced and continue to deal with. The guiding principal should be that it should be immaterial whether the Master Association is under declarant control or homeowner control and when the declarant is in control he cannot use master association funds for the benefit of his business objectives. In addition the declarant must act with the homeowners best interest in mind. We would like to see that these changes apply to all HOAs that currently exist and they should be required to be in compliance within a specified time period, for example two years after passage of this legislation.

B1. Open HOA board meetings: with executive session reserved for specific matters, have similar provisions as *in **Florida statutes 720.303** (2) BOARD MEETINGS*

- *(a) A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds .....*
- *(b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The association*

may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the members is inapplicable to meetings between the board or a committee and the association's attorney, with respect to meetings of the board held for the purpose of discussing personnel matters.

- *(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and.....*

Virginia has open meetings statutes in § 55-510.1. *as do many other states.*

C1. Transfer of common property: Dedicate or deed common areas to HOA, have similar provisions as in ***North Carolina 47C-2-107***

- *(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant*

Or have provisions such as:

- (b) Prohibit the use of the term "common area" unless they have specifically been deeded or dedicated to the master association.
- (c) The developer must turn over to the association all common areas so far defined when the homeowners have at least 51% or greater of the board seats.

D1. Conflicts of interest: Require arms length auditable business relationship between Decalarnt, HOA and all commercial entities in the community. There appears to be a conflict in what 47F allows and what **55A-8-31** Director conflict of interest, specifies as acceptable behavior. Since our Master Association is a not-for-profit corporation, as is a lot of other master associations, it appears 47F under "declarant control" negates the requirements in 55A this should be clarified and 47F should state explicitly that all the ethical requirements in 55A apply. In addition one has to question the "fiduciary responsibility" requirements and actions of our board of directors.

E1. Board make-up and transition process: board make-up similar to that specified in 47C, all property owner members elected by members, and a limited duration specified when Declarant will hold minority position on HOA board, the committee's suggestion to include provisions similar to 47C-3-103(d) and 47C-3-105 will not totally resolve our transition problem. Possibly adding provisions to define an incremental transition plan, an example of which may be: after 5 years, at least 2 board member or 25% whichever is greater, after 10 years 4 board members or 51% whichever is greater,

after 15 years the developer can maintain at least one seat on the board. An alternative solution might be legislation similar *to* ***Minnesota Statutes 515B.2-121*** *-MASTER ASSOCIATIONS. ..... (1) The master declaration may provide for a period of master developer control of the master association during which a master developer or a person designated by the master developer may appoint and remove the officers and directors of the master association. The period of master developer control begins on the date of the recording of the master declaration and terminates upon the earliest of the following events: (i) the voluntary surrender of the right to appoint directors;* ***(ii) the date ten years after the date the master declaration is recorded, unless extended by an amendment to the master declaration approved in writing by the master developer, and by 67 percent of the votes of members other than the master developer*** *.....*

F1.The problem of unlimited declarant control periods can also be resolved with legislation as found in ***Oregon - 94.600*** *Declarant control of association. (1) Subject to ORS 94.604 to 94.621, a declaration may reserve special declarant rights including, without limitation, the right to a period of declarant control that may be of limited or unlimited duration. A formal or written proxy or power of attorney is not required from an owner to vest the declarant with such authority. (2) A declarant may voluntarily relinquish any rights reserved in the declaration under subsection (1) of this section. (3) Upon the expiration of any period of declarant control reserved in the declaration under subsection (1) of this section, the rights automatically shall pass to the lot owners, including the declarant if the declarant owns a lot in the planned community.* ***(4) A declarant may not amend a declaration to increase the scope of special declarant rights reserved in the declaration after the sale of the first lot in the planned community unless owners representing 75 percent of the total vote, other than the declarant, agree to the amendment.***

G1. Disputes arbitrated by an unbiased third party: Some agency, state county or town has to handle problems that can't be resolved between the parties, **Florida Statutes 720** has such provision as stated in ***Florida 44.201 Citizen Dispute Resolution Centers***

Lou DeVita

deesatplay@ atmc.net

Frank Wiedman

fwiedman@atmc.net

AHH 6
10-20-10
Lt. Cmmd. Girard Lew

Thank you. My Name. Daughter foreclosed by Village Lakes HOA. I support fair & equitable treatment for both Homeowner & HOA. Past member of Kildaire Farms HOA and Architectural committee. 9/5/10 article

Need to protect both the homeowner and HOA. Covenants that allow foreclosure set the stage for abuse by misguided HOAs and management companies. We are a case in point. It is true that HOA dues were delinquent, but the amount does not justify the penalty imposed! The law gives the homeowner with a delinquent mortgage more rights than allowed in this case!

History: Foreclosed 6/23/09 & refilled 1/5/10.

HOMEOWNERS NEVER NOTIFIED

PROPERTY NOT POSTED

BANK NOT NOTIFIED

No hearing ever held

Insurance paid but not in effect; prevented a possible mortgage terms adjustment allowed by the "Obama" rules.

Taxes may have been paid twice (mortgage holder and HOA).

4/9/10 (Fri): eviction Notice by mail to be out by 4/14

4/12/10 (Mon): finally verified with HOA lawyer (& mine) that process was legal. Move out began!

4/14/10 (Wed): Sheriff and HOA Lawyer arrived just before noon to execute eviction. Lawyer would not allow recovery of records still in the house or clothing for the 2 & 3 year grandchildren which was still on the lawn. This was the third of 5 foreclosures executed by this lawyer and HOA management company that day

(31 st of the year?)

Mortgage company did not know of the foreclosure; insurance issue!

Immediately requested (in writing) access to get remaining personal property. HOA lawyer did not return calls. On 4/16 (PM) HOA management advises that all day 4/17 would be available for "move out". 0n arrival 4/17 was advised that HOA lawyer had restricted to the period of time from 9AM to 1PM. (He never showed up).

During Mid April, I contacted my attorney, and employed him to assist in resolving the Hobbs foreclosure. HOA lawyer did not return any of my attorney's calls, but after about a weeks delay, the HOA lawyer's associate notified my attorney of the amount needed to settle the matter. On 4/30 I provided the necessary funds and my attorney arranged for the return of the property to the Hobbs. The property was deeded back to the Hobbs on 5/20 and they moved back in shortly thereafter. A cost breakdown follows:

Late Dues and assessments	$1137.89
Late fees	$ 60.00
Court Costs	$ 755.50
Recording fees/stamps	$ 45.00
Foreclosure Attorney Fees	$3349.86
My Attorney fees	$1100.00
TOTAL	$6448.25

It appears that the Foreclosure Attorney Fees exceed the fees allowed by law.

AH#7

/ on website

FINDINGS AND OPTIONS FOR COMMITTEE ACTION

Finding 2 -- Board Accountability

Need to provide homeowners with better recourse when seeking to challenge actions by HOA Boards

- Committee received complaints concerning flagrant violations of the applicable statutes and/or HOA bylaws (failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants)
- Only recourse currently available to homeowners in most cases is to commence a civil action, which is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense

Finding 5 – Consumer Protection

Need for additional consumer protections to better protect homeowners from abusive HOA practices

- Complaints received about unreasonable actions by boards include: arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, abuse of the foreclosure process, and failure of the law to give homeowners enough rights to challenge the actions of HOA Boards
- Boards can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of an association, cause additional improvements to be made as part of the common elements and assess homeowners for those improvements, and such actions are often taken without giving notice or an opportunity to vote to homeowners.

Options to address issues concerning Board Accountability (Finding 2)/ Options to address issues concerning Consumer Protection – (Finding 5), include:

- ***Adopt the Uniform Common Interest Owners Bill of Rights Act. (UCIOBORA).***

  In 2008, the Uniform Law Commission (the "ULC") promulgated a free-standing and relatively short Uniform Act that addresses all of the 'association versus unit owner' issues touched on during the drafting of the 2008 Uniform Common Interest Ownership Act (UCIOA) amendments. The free-standing Act is known as the Uniform Common Interest Owners Bill Of Rights Act or "UCIOBORA". Highlights of the UCIOBORA are:

  Powers and duties of a unit owners association and the executive board are outlined.

Treatment of association bylaws, rulemaking, operation and governance, notice methods, unit owners and board meetings, and meeting and voting procedures are also provided, as are governing provisions for the adoption of budgets and special assessments.

UCIOBORA encompasses the authority to discipline unit owners, within limits, for failure to pay assessments, and the executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise on such. The right of an association to proceed in foreclosure on a lien against a unit owner is revised and limited, and the act provides priority for the application of delinquent sums.

Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.

- ***Allow/Require Alternative Dispute Resolution*** -- Authorize or require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding. (see UCIOBORA § 8(a)(3)).

  No similar provisions exist under the Condo Act or the Planned Community Act (PCA).

- ***Add provisions governing board discretion in enforcement.*** UCIOBORA sets forth a list of considerations a board must evaluate in a determination not to take enforcement action in a given situation. UCIOBORA § 8(b) provides:

> (b) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
>
> (1) the association's legal position does not justify taking any or further enforcement action;
>
> (2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;
>
> (3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
>
> (4) it is not in the association's best interests to pursue an enforcement action.
>
> (c) The executive board's decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the executive

board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

No similar provisions exist under the Condo Act or the PCA.

- ***Establish open meeting requirements.*** (UCIOBORA § 12). Among other things, UCOIBORA provides that meetings of HOA boards and committees must be open to unit owners, except during executive sessions (and specifies for what matters executive sessions may be held).

  Provisions under the Condo Act (G.S. 47C-3-108) and the PCA (G.S. 47F-3-108) specify that meetings of an association must be held at least once a year and, at regular intervals, an executive board must provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns.

- ***Enhance record-keeping requirements.*** UCIOBORA § 16 imposes significantly greater record-keeping requirements on HOAs than either the Condo Act (see G.S. 47C-3-118) or the PCA (see G.S. 47F-3-118). In addition to detailed financial records, UCIOBORA requires that minutes of all meetings, an association's organizational documents, as well as rules currently in effect be made available for examination and copying by a unit owner during reasonable business hours or at a mutually convenient time and location; and upon five days notice.

  The Condo Act and the PCA provide that, at a minimum, the association must keep accurate records of all cash receipts and expenditures and all assets and liabilities, and must make an annual income and expense statement available to all lot owners – these records must be made reasonably available for examination by any lot owner. Further, an association, upon written request, must furnish to a lot owner a statement setting forth the amount of unpaid assessments and other charges against a lot.

- ***Procedures for rules and assessments***: Institute procedures a HOA must follow that prior to: (1) adopting, amending, or repealing any rule; or (2) adopting budgets or special assessment. (UCIOBRA §§ 17, 20).

  No similar provisions exist under the Condo Act or the PCA with regard to rules or imposition of special assessments. Both do, however, specify processes that must be followed concerning adoption of association budgets (see G.S. 47C-3-103(c) and G.S. 47F-3-103(c)).

- ***Installment payments:*** Require an HOA to accept payment of outstanding balances from homeowners in installments

HOA *may* do so under current North Carolina law (see Condo Act (47C-3-1169e2)) and PCA (47F-3-116(e2)).

- ***Punitive Damages:*** Allow imposition of punitive damages for a HOAs willful failure to comply with consumer protection provisions. (see UCIOBORA § 21).

  No similar provisions exist under the Condo Act or the PCA.

- ***Mandatory Registration:*** Create mandatory registry of associations as provided in Article 5 of the Uniform Common Interest Ownership Act.

  No similar provisions exist under the Condo Act or the PCA.

- ***State Oversight Agency:*** Create a new State-level agency or empower an existing one (Real Estate Commission) to register and oversee the activities of homeowner associations. Entity may have enforcement powers as provided in Article 5 of the Uniform Common Interest Ownership Act, or Virginia's Common Interest Community Board, or may serve only an informational/advisory role as with Virginia's Office of the Common Interest Community Ombudsman.

  No State agency in North Carolina currently has responsibility for oversight of homeowner associations.

Finding 3 - Disclosure

The committee found a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property.

- Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding of the existence of restrictive covenants at the time they purchased their homes
- G.S. 47E-4 requires sellers of residential real property to furnish purchasers with a residential property disclosure statement, using a form developed by the Real Estate Commission ("REC"), which must include, among other things, "restrictive covenants affecting the real property." The current disclosure statement, however, only requires disclosure of ***violations*** of restrictive covenants

Options to achieve the goal of greater disclosure include:

1. Revising the Residential Property Disclosure Form developed by the REC pursuant to G.S. 47E-4 to require disclosure of HOAs and restrictive covenants;

2. Amending Chapter 47F, the Planned Community Act, to require sellers to provide prospective purchasers with specific information and documents relating to HOAs and the restrictions on the property being sold; and

3. Requiring that sellers provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

Each of these options is discussed more fully below.

Option 1: Revise the Residential Property Disclosure Form to require sellers of property in planned communities to disclose the existence of HOAs and restrictive covenants

The REC is statutorily required to develop the disclosure form that is mandated by G.S. 47E-4. Although the current statute can be read as requiring disclosure of covenants restricting the use of property, the current REC form provides a space only for disclosure of conditions that violate a restrictive covenant. There is no current requirement in the statute that the seller disclose the existence of a homeowners association.

The desired disclosure of the existence of restrictive covenants can be achieved either by: 1) formally requesting the Real Estate Commission to amend the disclosure form; or 2) amending G.S. 47E-4 to require the REC to make this change to the form. Because there is no reference in G.S. 47E-4 to homeowners associations, a statutory amendment would be required to accomplish this disclosure.

In addition to revising the disclosure form, the disclosure requirement would be strengthened by:

- eliminating the option of making "no representation" currently permitted under G.S. 47E-4(a)(2) (only with respect to the new disclosure of HOAs and restrictive covenants)
- amend G.S. 47E-2(9), which currently exempts "the first sale of a dwelling never inhabited" from the disclosure requirements of G.S. 47E-4, to require the new disclosure of HOAs and restrictive covenants in first sales of dwellings never inhabited

Option 2: Amend the Planned Community Act to require all sellers of property in planned communities to provide prospective purchasers with a copy of the declaration, covenants, bylaws, and the association rules and regulations.

This is the approach taken by the Uniform Common Interest Ownership Act ("UCIOA"). Under the UCIOA, the unit owners association is required, upon request by a unit owner, to provide a certificate containing the information needed by the owner to make the required disclosures, and the association is permitted to charge the owner a reasonable fee for the preparation of the certificate. In the case of declarants or dealers, the UCIOA provides that "unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement." UCIOA Section 4-108(a). In the case of resales, "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." UCIOA Section 4-109(c).

Unlike the Planned Community Act, both the UCIOA and the North Carolina Condominium Act mandates full disclosure (including furnishing copies of the declaration, recorded covenants, and association bylaws, rules an regulations) in sales of condo units by a declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser. G.S. 47C-4-102(c). In the case of resales of units, however, the Condominium Act stops short of the UCIOA requirement for disclosure, mandating only that the seller furnish a prospective purchaser with "a statement setting forth the monthly common expense assessment and any other fees payable by unit owners." G.S. 47C-4-109.

Option 3: Require sellers to provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

This objective could be achieved by amending the Planned Community Act to require sellers to provide prospective buyers of lots in planned communities with a brochure to be developed by the REC advising them in simple, understandable terms of basic powers of HOAs, examples of restrictions to which they may be subject, and how to obtain a copy of the governing documents containing the restrictions that apply to the property in question.

Finding 4 - Declarant Transfer Issues

The committee found that the law should be clarified with regard to the obligations of a declarant (developer).

- Complaints received concerning abuses by a declarant (refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems)
- Unlike the Condominium Act, the Planned Community Act does not limit the time period in which a declarant may maintain control of the association

Options to achieve the goal of clarifying the obligations of a declarant include adding language, which is already in the Condominium Act, to the Planned Community Act:

1. Specifying time limit for declarant control
2. Specifying obligations and liabilities of declarant who transfers declarant interest
3. Allowing homeowner association to terminate contracts and leases entered into by declarant during period of declarant control
4. Providing homeowner association with right of action and remedy against declarant for breach of contract or tort during period of declarant control

Each of these options is discussed more fully below:

Option 1: Add language to the Planned Community Act (PCA) specifying the end of declarant control.

Currently, the Planned Community Act merely states that the declaration may provide for a period of declarant control. (G.S. 47F-3-103(d)). In contrast, the Condominium Act in G.S. 47C-3-103(d) specifies when declarant control must end: "Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of (i) 120 days after the conveyance of 75% of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised."

Option 2: Add language to the Planned Community Act specifying the extent of the obligations and liabilities imposed upon a declarant who transfers his or her declarant interest in a lot or condominium to a third party.

The Condominium Act in G.S. 47C-3-104 sets out the liability of transferor declarant when there is a transfer of any special declarant right.[1] The transferor declarant remains liable for

[1] The Planned Community Act and the Condominium Act define "special declarant rights" as rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to

any obligation or liability arising before the transfer. Also if the right is transferred to an affiliate of the declarant, the transferor remains liable.

Option 3: Add language to the PCA allowing the association to terminate certain contracts and leases entered into by the declarant during the period of declarant control

Currently G.S. 47F-3-105 merely allows the termination of contracts and leases entered into before the executive board elected by the lot owners takes office, if the contract or lease is not bona fide or was unconscionable to the lot owners. In contrast, the Condominium Act, in G.S. 47C-3-105, also expands the authority to terminate the following contracts and leases of the declarant: (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, and (2) any other contract or lease between the association and a declarant or an affiliate of a declarant.

Option 4: Add language to the PCA to provide the association or lot owners with a right of action and remedy against the declarant for losses to the plaintiff caused by the declarant's tort or breach of contract during the period of declarant control.

Both the PCA and Condominium Act toll any statute of limitation affecting the association's right of action under this section until the period of declarant control terminates. However, the Condominium Act in G.S. 47C-3-111 (c) and (d) also addresses the declarant's liability during a period of declarant control: If an action is brought against the association for a wrong that occurred during a period of declarant control and the association gives the declarant reasonable notice of, and an opportunity to defend, against the action, the declarant is liable to the association in either tort or contract. Specifically, the declarant is liable to the association for all tort losses suffered that are not covered by insurance carried by the association and all losses the association would not have incurred but for a breach of contract.[2] If the declarant is liable to the association it is also responsible for all litigation expenses including reasonable attorneys' fees incurred by the association.

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maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control. (See G.S. 47C-3-104 and G.S. 47F-1-103)

[2] However, G.S. 47C-3-111(c) does not impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

Finding 6- Foreclosure Issues

Current law authorizes homeowner associations to use power of sale foreclosure to recover unpaid assessments and judicial foreclosure to recover unpaid fines and fees. The committee found that there may be a need to prohibit or limit the use of foreclosure in all or some cases.

Options Concerning Foreclosure Issues:

Currently, under both the Condominium Act (G.S. 47C-3-116) and the Planned Community Act (G.S. 47F-3-116), homeowner associations are authorized to file a claim of lien for any assessment that remains unpaid for a period of 30 days or more. Unless the declaration provides otherwise, fees, charges, late charges, and fines are enforceable as assessments.

If the debt securing the lien is based on fines, interest on fines or attorneys' fees resulting from fines, the association may only enforce the lien by use of judicial foreclosure. Associations may not seek to collect a service, collection, consulting, or administration fee unless the declaration expressly authorizes it and a lien secured by such a fee is also only enforceable by use of judicial foreclosure.

If the debt is for assessments for common expenses, the association may enforce the lien by use of the power of sale foreclosure statute. (Chapter45, Art. 2A) Unlike judicial foreclosure, a power of sale foreclosure proceeding is held before the clerk of court and the clerk must sign a foreclosure order if there is evidence to prove only four factors: (1) a valid debt, (2) default in payment, (3) a legal right to foreclose, and (4) all owners have been served with notice of the hearing. No other issue may be considered in the proceeding. Once the clerk issues the order the property may be sold to satisfy the debt, in the same manner as a mortgage or deed of trust.

The following options to limit an association's authority to use foreclosure to enforce a lien have been recommended in the Uniform Common Interest Owners Bill of Rights Act:

1. The assessment must be at least 3 months past due and the unit owner has failed to accept or comply with a payment plan offered by the association.

   Under current law, the assessment need only be 30 days past due and the law contains a specific provision that neither the association nor the homeowner is obligated to offer or accept any proposed installment plan, although the executive board may agree to allow it.

2. The executive board must vote to commence foreclosure against the specific unit.

   Current law does not specify the process used by the association to commence foreclosure against a specific homeowner.

3. The association must apply any payments made by the homeowner first to unpaid assessments, then to late charges, then to attorneys' fees and other collection charges, and finally to unpaid fees, fines , interest, and late fees.

   Current law does not specify how payments must be applied, however, it does require that the association notify the homeowner in writing and by first-class

mail that the balance due must be paid within 15 days of the mailing or the homeowner will also be liable for attorneys' fees and court costs. Attorneys' fees in an uncontested case are limited to $1,200, not including costs or expenses.

4. The association may not use foreclosure to enforce a lien resulting from unpaid fines and related sums, unless the association has obtained and perfected a judgment against the homeowner.

Current law provides that a lien resulting from fines and related sums can only be enforced by judicial foreclosure, which would result in a judgment. North Carolina law appears to conform to this limitation.

5. All aspects of the foreclosure must be commercially reasonable.

Chapter 45, the Foreclosure statute, specifies the method for advertising, time, date, place, and terms of foreclosure proceedings and the sale of property.

Finding 7 – Solar Access Issues

The Committee received complaints from homeowners and heard from staff with the State Energy Office that there is some confusion with regard to the law that invalidates new restrictive covenants as well as city and county ordinances which prohibit installation of solar collector devices. Specifically concern was raised about an exception contained in the law that allows prohibitions on installation if the solar device would be visible from a roof slope or façade or if it faces a public access way. Reportedly this exception has been used by HOAs to exclude solar devices altogether.

Options to address solar access issues (Finding 7), include:

- Remove the "visibility exception"
- Limit the "visibility exception," as other states have done, by:
  - Limiting ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; or
  - limiting required modifications (for aesthetics) that reduce the operating efficiency of the system

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

AGENDA

December 6, 2010
1:00 p.m.
Room 421 LOB

I. Introduction
Representative William McGee, Co-Chair, Presiding
Representative Jennifer Weiss, Co-Chair

II. Committee Discussion of Options for Committee Action and Formulation of Potential Legislation

III. Adjournment

House Select Committee on Homeowners Associations

December 6, 2010

1:00 pm

The Select Committee on Homeowners Associations met on December 6, 2010 in room 421 of the Legislative Office Building at 1:00 pm. The following members were present: Cochairman McGee (presiding), Cochairman Weiss, and Representatives Cleveland, Heagarty, Howard and Wray. For visitors in attendance see the attached Visitors Attendance Sheet.

Representative McGee called the meeting to order and explained that this meeting was called for the committee members to revisit the findings and options (see attachment 1) and to decide on which items the committee would like to have legislation drafted for the upcoming session. He further stated that the following interests he had at the beginning of the interim committee were still valid:

1. HOA protection for all, HOA members as well as HOA officers
2. Disclosure and notice
3. HOA board knowledge
4. HOA board accessibility
5. HOA ownership- what is it and when does it begin?

Representative McGee stated that the committee is not required to have legislation drawn for the report, but his intent and Representative Weiss's intent was to have bills drawn for introduction in the upcoming session. Representative McGee asked Representative Weiss if she had any comments before beginning the discussion. Representative Weiss stated that she had heard a lot about this issue before the committee was formed, the staff had presented good information and it was now time for the committee to work together to find solutions for these problems. Representative McGee added that the condensed version of the Uniform Common Interest Owners Bill Of Rights Act was at the committee's disposal to use all or parts of to form legislation (see attachment #2).

The committee discussed issues surrounding the problems associated with the existing law, how effective or ineffective they are at the present time and the changes necessary to improve the law.

Representative McGee then recapped the committee's decisions with the following points to include in legislation for this upcoming session and points that need more work by the committee:

1. To use the Uniform Common Interest Owners Bill Of Rights Act to allow/require alternative dispute resolutions
2. To add to provisions governing board discretion and enforcement

3. To establish open meeting requirements
4. To enhance record keeping requirements
5. To include procedures for rules and assessments
6. To make changes in the installment payments and practices
7. Punitive damages on the HOA to hold individual officers accountable for willfully failing to follow the prescribed law (*more work by committee needed*)
8. Mandatory registration with the Real Estate Commission and others (*more work by committee needed*)
9. Full disclosure and sales documents
10. Provide requirements applicable to a home in a Planned Community
11. Declarant transfer issues (*include for this session but needs more work by committee*)
12. Enforcement of a lien
13. Payments made by owners are first allocated to unpaid assessments, then late charges, then attorneys' fees and other collection charges.
14. Solar access issues (*more work by committee needed*)

Representative McGee announced that the committee would need to meet again before session starts to prepare legislation for introduction and thanked everyone for their participation. The meeting adjourned at 2:58 pm.

Representative William C. McGee,
Cochair

Jayne A. Nelson,
Committee Assistant

12-6-10 9A-91

FINDINGS AND OPTIONS FOR COMMITTEE ACTION

Finding 2 -- Board Accountability

Need to provide homeowners with better recourse when seeking to challenge actions by HOA Boards

- Committee received complaints concerning flagrant violations of the applicable statutes and/or HOA bylaws (failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants)
- Only recourse currently available to homeowners in most cases is to commence a civil action, which is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense

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Need for additional consumer protections to better protect homeowners from abusive HOA practices

- Complaints received about unreasonable actions by boards include: arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, abuse of the foreclosure process, and failure of the law to give homeowners enough rights to challenge the actions of HOA Boards
- Boards can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of an association, cause additional improvements to be made as part of the common elements and assess homeowners for those improvements, and such actions are often taken without giving notice or an opportunity to vote to homeowners.

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Act is known as the Uniform Common Interest Owners Bill Of Rights Act or "UCIOBORA". Highlights of the UCIOBORA are:

Powers and duties of a unit owners association and the executive board are outlined.

Treatment of association bylaws, rulemaking, operation and governance, notice methods, unit owners and board meetings, and meeting and voting procedures are also provided, as are governing provisions for the adoption of budgets and special assessments.

UCIOBORA encompasses the authority to discipline unit owners, within limits, for failure to pay assessments, and the executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise on such. The right of an association to proceed in foreclosure on a lien against a unit owner is revised and limited, and the act provides priority for the application of delinquent sums.

Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.

- *Allow/Require Alternative Dispute Resolution* -- Authorize or require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding. (see UCIOBORA § 8(a)(3)).

No similar provisions exist under the Condo Act or the Planned Community Act (PCA).

- *Add provisions governing board discretion in enforcement.* UCIOBORA sets forth a list of considerations a board must evaluate in a determination not to take enforcement action in a given situation. UCIOBORA § 8(b) provides:

> (b) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) the association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(c) The executive board's decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

No similar provisions exist under the Condo Act or the PCA.

- *Establish open meeting requirements.* (UCIOBORA § 12). Among other things, UCOIBORA provides that meetings of HOA boards and committees must be open to unit owners, except during executive sessions (and specifies for what matters executive sessions may be held).

  Provisions under the Condo Act (G.S. 47C-3-108) and the PCA (G.S. 47F-3-108) specify that meetings of an association must be held at least once a year and, at regular intervals, an executive board must provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns.

- *Enhance record-keeping requirements.* UCIOBORA § 16 imposes significantly greater record-keeping requirements on HOAs than either the Condo Act (see G.S. 47C-3-118) or the PCA (see G.S. 47F-3-118). In addition to detailed financial records, UCIOBORA requires that minutes of all meetings, an association's organizational documents, as well as rules currently in effect be made available for examination and copying by a unit owner during reasonable business hours or at a mutually convenient time and location; and upon five days notice.

  The Condo Act and the PCA provide that, at a minimum, the association must keep accurate records of all cash receipts and expenditures and all assets and liabilities, and must make an annual income and expense statement available to all lot owners – these records must be made reasonably available for examination by any lot owner. Further, an association, upon written request,

must furnish to a lot owner a statement setting forth the amount of unpaid assessments and other charges against a lot.

- *Procedures for rules and assessments*: Institute procedures a HOA must follow that prior to: (1) adopting, amending, or repealing any rule; or (2) adopting budgets or special assessment. (UCIOBRA §§ 17, 20).

  No similar provisions exist under the Condo Act or the PCA with regard to rules or imposition of special assessments. Both do, however, specify processes that must be followed concerning adoption of association budgets (see G.S. 47C-3-103(c) and G.S. 47F-3-103(c)).

- *Installment payments:* Require an HOA to accept payment of outstanding balances from homeowners in installments

  HOA *may* do so under current North Carolina law (see Condo Act (47C-3-1169e2)) and PCA (47F-3-116(e2)).

- *Punitive Damages:* Allow imposition of punitive damages for a HOAs willful failure to comply with consumer protection provisions. (see UCIOBORA § 21).

  No similar provisions exist under the Condo Act or the PCA.

- *Mandatory Registration:* Create mandatory registry of associations as provided in Article 5 of the Uniform Common Interest Ownership Act.

  No similar provisions exist under the Condo Act or the PCA.

- *State Oversight Agency:* Create a new State-level agency or empower an existing one (Real Estate Commission) to register and oversee the activities of homeowner associations. Entity may have enforcement powers as provided in Article 5 of the Uniform Common Interest Ownership Act, or Virginia's Common Interest Community Board, or may serve only an informational/advisory role as with Virginia's Office of the Common Interest Community Ombudsman.

  No State agency in North Carolina currently has responsibility for oversight of homeowner associations.

Finding 3 - Disclosure

The committee found a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property.

- Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding of the existence of restrictive covenants at the time they purchased their homes
- G.S. 47E-4 requires sellers of residential real property to furnish purchasers with a residential property disclosure statement, using a form developed by the Real Estate Commission ("REC"), which must include, among other things, "restrictive covenants affecting the real property." The current disclosure statement, however, only requires disclosure of *violations* of restrictive covenants

Options to achieve the goal of greater disclosure include:

1. Revising the Residential Property Disclosure Form developed by the REC pursuant to G.S. 47E-4 to require disclosure of HOAs and restrictive covenants;

2. Amending Chapter 47F, the Planned Community Act, to require sellers to provide prospective purchasers with specific information and documents relating to HOAs and the restrictions on the property being sold; and

3. Requiring that sellers provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

Each of these options is discussed more fully below.

Option 1: Revise the Residential Property Disclosure Form to require sellers of property in planned communities to disclose the existence of HOAs and restrictive covenants

The REC is statutorily required to develop the disclosure form that is mandated by G.S. 47E-4. Although the current statute can be read as requiring disclosure of covenants restricting the use of property, the current REC form provides a space only for disclosure of conditions that violate a restrictive covenant. There is no current requirement in the statute that the seller disclose the existence of a homeowners association.

The desired disclosure of the existence of restrictive covenants can be achieved either by: 1) formally requesting the Real Estate Commission to amend the disclosure form; or 2) amending G.S. 47E-4 to require the REC to make this change to the form. Because there is no reference in G.S. 47E-4 to homeowners associations, a statutory amendment would be required to accomplish this disclosure.

In addition to revising the disclosure form, the disclosure requirement would be strengthened by:

- eliminating the option of making "no representation" currently permitted under G.S. 47E-4(a)(2) (only with respect to the new disclosure of HOAs and restrictive covenants)
- amend G.S. 47E-2(9), which currently exempts "the first sale of a dwelling never inhabited" from the disclosure requirements of G.S. 47E-4, to require the new disclosure of HOAs and restrictive covenants in first sales of dwellings never inhabited

Option 2: Amend the Planned Community Act to require all sellers of property in planned communities to provide prospective purchasers with a copy of the declaration, covenants, bylaws, and the association rules and regulations.

This is the approach taken by the Uniform Common Interest Ownership Act ("UCIOA"). Under the UCIOA, the unit owners association is required, upon request by a unit owner, to provide a certificate containing the information needed by the owner to make the required disclosures, and the association is permitted to charge the owner a reasonable fee for the preparation of the certificate. In the case of declarants or dealers, the UCIOA provides that "unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement." UCIOA Section 4-108(a). In the case of resales, "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." UCIOA Section 4-109(c).

Unlike the Planned Community Act, both the UCIOA and the North Carolina Condominium Act mandates full disclosure (including furnishing copies of the declaration, recorded covenants, and association bylaws, rules an regulations) in sales of condo units by a declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser. G.S. 47C-4-102(c). In the case of resales of units, however, the Condominium Act stops short of the UCIOA

requirement for disclosure, mandating only that the seller furnish a prospective purchaser with "a statement setting forth the monthly common expense assessment and any other fees payable by unit owners." G.S. 47C-4-109.

Option 3: Require sellers to provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

This objective could be achieved by amending the Planned Community Act to require sellers to provide prospective buyers of lots in planned communities with a brochure to be developed by the REC advising them in simple, understandable terms of basic powers of HOAs, examples of restrictions to which they may be subject, and how to obtain a copy of the governing documents containing the restrictions that apply to the property in question.

Finding 4 - Declarant Transfer Issues

The committee found that the law should be clarified with regard to the obligations of a declarant (developer).

- Complaints received concerning abuses by a declarant (refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems)
- Unlike the Condominium Act, the Planned Community Act does not limit the time period in which a declarant may maintain control of the association

Options to achieve the goal of clarifying the obligations of a declarant include adding language, which is already in the Condominium Act, to the Planned Community Act:

1. Specifying time limit for declarant control
2. Specifying obligations and liabilities of declarant who transfers declarant interest
3. Allowing homeowner association to terminate contracts and leases entered into by declarant during period of declarant control
4. Providing homeowner association with right of action and remedy against declarant for breach of contract or tort during period of declarant control

Each of these options is discussed more fully below:

Option 1: Add language to the Planned Community Act (PCA) specifying the end of declarant control.

Currently, the Planned Community Act merely states that the declaration may provide for a period of declarant control. (G.S. 47F-3-103(d)). In contrast, the Condominium Act in G.S. 47C-3-103(d) specifies when declarant control must end: "Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of (i) 120 days after the conveyance of 75% of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised."

Option 2: Add language to the Planned Community Act specifying the extent of the obligations and liabilities imposed upon a declarant who transfers his or her declarant interest in a lot or condominium to a third party.

The Condominium Act in G.S. 47C-3-104 sets out the liability of transferor declarant when there is a transfer of any special declarant right.[1] The transferor declarant remains liable for any obligation or liability arising before the transfer. Also if the right is transferred to an affiliate of the declarant, the transferor remains liable.

Option 3: Add language to the PCA allowing the association to terminate certain contracts and leases entered into by the declarant during the period of declarant control

Currently G.S. 47F-3-105 merely allows the termination of contracts and leases entered into before the executive board elected by the lot owners takes office, if the contract or lease is not bona fide or was unconscionable to the lot owners. In contrast, the Condominium Act, in G.S. 47C-3-105, also expands the authority to terminate the following contracts and leases of the declarant: (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, and (2) any other contract or lease between the association and a declarant or an affiliate of a declarant.

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[1] The Planned Community Act and the Condominium Act define "special declarant rights" as rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control. (See G.S. 47C-3-104 and G.S. 47F-1-103)

Option 4: Add language to the PCA to provide the association or lot owners with a right of action and remedy against the declarant for losses to the plaintiff caused by the declarant's tort or breach of contract during the period of declarant control.

Both the PCA and Condominium Act toll any statute of limitation affecting the association's right of action under this section until the period of declarant control terminates. However, the Condominium Act in G.S. 47C-3-111 (c) and (d) also addresses the declarant's liability during a period of declarant control: If an action is brought against the association for a wrong that occurred during a period of declarant control and the association gives the declarant reasonable notice of, and an opportunity to defend, against the action, the declarant is liable to the association in either tort or contract. Specifically, the declarant is liable to the association for all tort losses suffered that are not covered by insurance carried by the association and all losses the association would not have incurred but for a breach of contract.[2] If the declarant is liable to the association it is also responsible for all litigation expenses including reasonable attorneys' fees incurred by the association.

[2] However, G.S. 47C-3-111(c) does not impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

Finding 6- Foreclosure Issues

Current law authorizes homeowner associations to use power of sale foreclosure to recover unpaid assessments and judicial foreclosure to recover unpaid fines and fees. The committee found that there may be a need to prohibit or limit the use of foreclosure in all or some cases.

Options Concerning Foreclosure Issues:

Currently, under both the Condominium Act (G.S. 47C-3-116) and the Planned Community Act (G.S. 47F-3-116), homeowner associations are authorized to file a claim of lien for any assessment that remains unpaid for a period of 30 days or more. Unless the declaration provides otherwise, fees, charges, late charges, and fines are enforceable as assessments.

If the debt securing the lien is based on fines, interest on fines or attorneys' fees resulting from fines, the association may only enforce the lien by use of judicial foreclosure. Associations may not seek to collect a service, collection, consulting, or administration fee unless the declaration expressly authorizes it and a lien secured by such a fee is also only enforceable by use of judicial foreclosure.

If the debt is for assessments for common expenses, the association may enforce the lien by use of the power of sale foreclosure statute. (Chapter45, Art. 2A) Unlike judicial foreclosure, a power of sale foreclosure proceeding is held before the clerk of court and the clerk must sign a foreclosure order if there is evidence to prove only four factors: (1) a valid debt, (2) default in payment, (3) a legal right to foreclose, and (4) all owners have been served with notice of the hearing. No other issue may be considered in the proceeding. Once the clerk issues the order the property may be sold to satisfy the debt, in the same manner as a mortgage or deed of trust.

The following options to limit an association's authority to use foreclosure to enforce a lien have been recommended in the Uniform Common Interest Owners Bill of Rights Act:

1. The assessment must be at least 3 months past due and the unit owner has failed to accept or comply with a payment plan offered by the association.

Under current law, the assessment need only be 30 days past due and the law contains a specific provision that neither the association nor the homeowner is obligated to offer or accept any proposed installment plan, although the executive board may agree to allow it.

2. The executive board must vote to commence foreclosure against the specific unit.

Current law does not specify the process used by the association to commence foreclosure against a specific homeowner.

3. The association must apply any payments made by the homeowner first to unpaid assessments, then to late charges, then to attorneys' fees and other collection charges, and finally to unpaid fees, fines , interest, and late fees.

Current law does not specify how payments must be applied, however, it does require that the association notify the homeowner in writing and by first-class mail that the balance due must be paid within 15 days of the mailing or the homeowner will also be liable for attorneys' fees and court costs. Attorneys' fees in an uncontested case are limited to $1,200, not including costs or expenses.

4. The association may not use foreclosure to enforce a lien resulting from unpaid fines and related sums, unless the association has obtained and perfected a judgment against the homeowner.

Current law provides that a lien resulting from fines and related sums can only be enforced by judicial foreclosure, which would result in a judgment. North Carolina law appears to conform to this limitation.

5. All aspects of the foreclosure must be commercially reasonable.

Chapter 45, the Foreclosure statute, specifies the method for advertising, time, date, place, and terms of foreclosure proceedings and the sale of property.

Finding 7 – Solar Access Issues

The Committee received complaints from homeowners and heard from staff with the State Energy Office that there is some confusion with regard to the law that invalidates new restrictive covenants as well as city and county ordinances which prohibit installation of solar collector devices. Specifically concern was raised about an exception contained in the law that allows prohibitions on installation if the solar device would be visible from a roof slope or façade or if it faces a public access way. Reportedly this exception has been used by HOAs to exclude solar devices altogether.

Options to address solar access issues (Finding 7), include:

- Remove the "visibility exception"
- Limit the "visibility exception," as other states have done, by:
  - Limiting ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; or
  - limiting required modifications (for aesthetics) that reduce the operating efficiency of the system

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UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

WITH PREFATORY NOTE AND COMMENTS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
BIG SKY, MONTANA

July 18 – July 25, 2008

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ON UNIFORM STATE LAWS

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UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT

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PREFATORY NOTE AND SUMMARY
THE 2008 COMMON INTEREST OWNERS BILL OF RIGHTS ACT or "UCIOBORA"

The 2008 Amendments to the Uniform Common Interest Ownership Act – In 2008, the Uniform Law Commission (the "ULC") approved amendments to the Uniform Common Interest Ownership Act ("UCIOA"), after a four year Drafting Committee effort. Colloquially, this has become known as "UCIOA 3.0."

UCIOA 3.0 primarily addresses a range of significant controversies between unit owner associations and individual members of those associations that have arisen in the years since the ULC last considered amendments to UCIOA in 1994. To a lesser degree, these amendments also address a range of other matters affecting common interest communities – that is, condominiums, cooperatives, and planned communities – that practitioners have identified throughout the country over the last decade.

Despite the many years of drafting efforts beginning in 1976 with The Uniform Condominium Act and culminating in the 1994 amendments to UCIOA, it had become increasingly clear by the time the Drafting Committee was created in 2005 that major tensions remained in the Common Interest Community field that neither UCIOA or any of its constituent Acts – nor most State statutes in this field – adequately addressed. Those tensions principally involved the perception that individual unit owners were often unduly disadvantaged in their dealings with the elected directors and employee/managers of unit owner associations.

Even in those few states that had adopted UCIOA more or less intact, and therefore were able to apply the detailed provisions of that Act to association activities, there has been a growing focus, both in the media and in professional conferences, on the intensity of owner/association disputes. State legislators were besieged with lobbying efforts to adopt narrowly focused special interest statutes intended to fix one or another association 'problem'. Even the federal government became involved, enacting a federal statute to insure that associations of every form of common interest community must permit the display of the American flag on units, and another one that enabled individual unit owners to purchase individual cable television systems, notwithstanding widespread prohibitions on such purchases by unit owner associations.

Accordingly, UCIOA 3.0 systematically identified those areas where there have been allegations that those who control the decision-making apparatus of associations have either abused the rights of individual unit owners, or suffer from such inadequate legislation that they are unable to adequately assist their owners. The list is considerable and includes at least these matters:

The Need for a Free-Standing Home Owner Bill of Rights - The ULC recognized that simply amending UCIOA or the constituent Acts – Uniform Condominium Act, Uniform Planned Community Act and Model Real Estate Cooperative Act – to add enhanced provisions for each of those Acts might not offer a sufficiently broad set of statutory options for consideration by State legislators around the United States. The reason is that each of these complex Acts has its detractors who have historically blocked adoption of these Acts in any state

because of the narrow interests of that stakeholder interest group. Thus, even in the many states that adopted the 1978 version of UCA, the many benefits of that Act – especially as amended in 1994 – have not been broadly realized for most of the common interest communities in those states, in part because those states have not generally adopted the 1994 amendments to UCA, and in part because UCA does not apply to the far more common 'planned communities' in those States, or to cooperatives.

Accordingly, it is common today to find one body of law in a state that applies to unit owner associations for condominiums in that state and an entirely different – and much less developed – body of law applicable to unit owner associations for either cooperatives or planned communities in the same state, when the unit owners in all three forms of ownership experience identical issues.

Further, ULC acknowledges that it will often not be feasible to enact UCIOA 3.0, in part because of the difficulty drafters in the States may encounter in integrating any new adoption of the existing Uniform Acts with the laws that may already exist in a particular state.

For these reasons, ULC promulgated a free-standing and relatively short Uniform Act that addresses all of the 'association versus unit owner' issues touched on during the drafting of the 2008 UCIOA amendments. The free-standing Act is known as the Uniform Common Interest Owners Bill Of Rights Act or "UCIOBORA". While not all sections of UCIOBORA are identical to UCIOA 3.0, the concepts underlying each Act are the same, and are adjusted simply to recognize the simplified nature of UCIOBORA.

ULC believes that in a state that had already adopted UCIOA, the better choice for that State would be to adopt UCIOA 3.0, rather than the UCIOBORA.

However, in states where none of these Acts has been adopted, or where only an early version of the Condominium Act had been adopted, it should be relatively easy to adopt UCIOBORA. This outcome would forego the considerable benefits that the more comprehensive statutes afford; however, it would provide the legislatures in the several states a ready means of addressing these currently controversial political issues, without engaging the other stakeholders who might be inclined to resist adoption of the more comprehensive Acts.

Highlights of the Act

Highlights of the new UCIOBORA are:

- Includes new key definitions, such as "common interest community" and "record."
- The new Act applies to all common interest communities in the state, whether or not existing prior to enactment of UCIOBORA in a state. However, because of concerns that the statute not be construed as impairing contracts, not all sections apply to all pre-act communities.
- Powers and duties of a unit owners association and the executive board are outlined.

Treatment of association bylaws, rulemaking, operation and governance, notice methods, unit owners and board meetings, and meeting and voting procedures are also provided, as are governing provisions for the adoption of budgets and special assessments.

- UCIOBORA encompasses the authority to discipline unit owners, within limits, for failure to pay assessments, and the executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise on such. The right of an association to proceed in foreclosure on a lien against a unit owner is revised and limited, and the act provides priority for the application of delinquent sums.

- Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.

- Procedures are provided for the removal of officers and directors of an association, along with certain protections for declarant-appointed directors. Removal procedures must be posted as part of the meeting notice, and the affected director or officer must have the opportunity to be heard.

Summary - Both UCIOA 3.0 and UCIOBORA address critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, meetings and treatment of records. There are a significant number of other amendments, style and substantive, to clarify and modernize the operation and governance of common interest associations. The new acts will better serve those governed by their provisions, and should be considered in every state.

Parallel Citation Table - The UCIOBORA sections, as they correspond to UCIOA Version 3.0, are:

UCIOBORA Section	Corresponding UCIOA 3.0 Section	Section Topic
Section 1	Section 1-101	Short Title (Adds Bill of Rights)
Section 2	Section 1-103	Definitions
Section 3	Section 1-104	No Variation By Agreement
Section 4	Section 1-113	Obligation of Good Faith
Section 5	Section 1-201	Applicability to New Common Interest Communities; Effect of Amendments
Section 6	Section 1-205, 1-206	Applicability to Pre-Existing Common Interest Communities
Section 7	Section 1-209, 1-210	Exempt Real Estate Arrangements
Section 8	Section 3-102	Powers and Duties of Unit Owners Associations
Section 9	Section 3-103(a) and (b), 3-101	Executive Board Members and Officers
Section 10	Section 3-106	Bylaws

Section 11	Section 3-108(a)	Unit Owner Meetings
Section 12	Section 3-108(b)	Meetings of Executive Board and Committees
Section 13	Section 3-109	Quorum
Section 14	Section 3-110	Voting; Proxies; Ballot
Section 15	Section 3-116(n)	Limitation on Foreclosure
Section 16	Section 3-118	Association Records
Section 17	Section 3-120	Rules
Section 18	Section 3-121	Notice to Unit Owners
Section 19	Section 3-122	Removal of Officers and Directors
Section 20	Section 3-123	Adoption of Budgets; Special Assessments
Section 21	Section 4-117, 1-114	Effect of Violation on Rights of Action; Attorney's Fees
Section 22	Section 1-108	Supplemental General Principles of Law; Conflicts
Section 23, 24, 25	Section 1-110, 1-116, n/a	Uniformity of Application, Relation to ESIGN, and Effective Date

UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Common Interest Owners Bill of Rights Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Assessment" means the sum attributable to each unit and due to the association pursuant to the budget adopted under Section 20.

(2) "Association" means the unit owners association.

(3) "Bylaws" means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association, regardless of the form in which the association is organized, including any amendments to the instruments.

(4) "Common expense liability" means the liability for common expenses allocated to each unit.

(5) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) "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 that declaration. The term does not include an arrangement described in Section 7. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest of less than [20] years in a unit, including renewal options.

(7) "Declarant" means a person or group of persons acting in concert that:

(A) as part of a common promotional plan, offers to dispose of the interest of the

person or group of persons in a unit not previously disposed of; or

(B) reserves or succeeds to any declarant right.

(8) "Declaration" means the instrument, however denominated, that creates a common interest community, including any amendments to that instrument.

(9) "Executive board" means the body, regardless of name, designated in the declaration or bylaws which has power to act on behalf of the association.

(10) "Limited common element" means a portion of the common elements allocated for the exclusive use of one or more but fewer than all of the units.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. [In the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee.]

(12) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Residential purposes" means use for dwelling or recreational purposes, or both.

(14) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

(15) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy.

(16) "Unit owner" means a person that owns a unit.

Comment

1. Regardless of how terms are used in a project's governing instrument, defined terms have an unvarying meaning in the Act, and any restricted practice which depends on the definition of a term is not affected by a changed term in the documents.

> **Example**: A declarant might vary the definition of "unit owner" in the declaration to exclude himself in an attempt to avoid assessments for units which he owns. The attempt would be futile, since the Act defines a declarant who owns a unit as a unit owner and defines the liabilities of a unit owner.

2. Definition (6), "Common interest community" creates one comprehensive definition which is used through the Act, to refer collectively to the three particular forms of common interest community: condominiums, cooperatives, and planned communities.

Each of those forms in turn, may have a separate definition under other law of the state, but this act applies to all arrangements which meet this definition. Thus, there are but three forms of common interest community: (1) condominiums; (2) cooperatives; and (3) everything else.

The definition of "common interest community" accomplishes two other main goals. First, it makes clear that the mutual obligations of unit owners – an obligation which arises "by virtue of" that ownership – to pay a share of the project's expenses may include a share of services provided to unit owners or other expenses provided either to the common elements or the units. Second, the definition makes clear that several common real estate arrangements described in Section 7 are excluded from the definition. Section 7 thus resolves the question of whether cost-sharing arrangements between an association and either another association or a third party require creation of a new association [they do not]. Section 7(b) also confirms that a variety of simple, traditional arrangements, such as a shared driveway, party wall, or shared well, which some have argued would technically satisfy the definition of "common interest community" in the Act as originally drafted, are not subject to the Act unless the drafter chooses that result.

3. Definition (7), "Declarant," is designed to exclude persons who may be called upon to execute the declaration in order to ratify the creation of the common interest community, but who are not intended to be charged with the responsibilities imposed on all declarants by this Act if that is all they do. Examples of such persons include holders of pre-existing liens and, in the case of leasehold common interest communities, ground lessors. Other persons similarly protected by the narrow wording of this definition include real estate brokers, because they do not offer to dispose of their own interest in a unit. Similarly, unit owners reselling their units are not declarants because these units were "previously disposed of" when originally conveyed.

If the association, itself, or in conjunction with another declarant, is offering units for sale to others, and if those units have not previously been sold or otherwise disposed of, then the association itself is a declarant.

Finally, a person who, while in control of the association, chooses not to exercise that control, is still a declarant.

4. Definition (8), "Declaration," is defined as "any instruments, however denominated, that create a common interest community, including any amendments to those instruments." Thus, the term would not only include the traditional condominium declaration with which most practitioners are familiar, or the declaration of covenants, conditions, and restrictions (CC & R's) so common in planned unit developments. It would also include, for example, a series of deeds to units with common mutually beneficial restrictions, or to any other instruments which create the relationship which constitutes a common interest community. If those recorded instruments create that relationship, then those documents constitute a declaration and must contain, for new projects, the information required by Section 2-105.

The declaration of a cooperative does not include the proprietary leases of the individual units, although a sample of such a lease might be attached as an exhibit to the declaration.

Similarly, the definition of "declaration" of any common interest community does not refer to the bylaws of the association or the documents creating the association. Such documents do not "create" the common interest community, but merely regulate its use after creation. The bylaws may, but need not be, an exhibit to the declaration.

5. The definition (13) of "residential purposes" includes "recreational purposes." This common sense definition is used in order to avoid repeated use of a lengthier defined term, such as "residential or consumer owned recreational purposes."

The Act contemplates that "recreational purposes" would be "consumer owned" recreational purposes commonly marketed for sale to individual owners – uses such as dock spaces for boats, campgrounds, airplane tie downs, etc. By including these kinds of uses within the definition, the Act intends to provide the same consumer protections which it offers to individual residential purchasers – persons who typically buy for their own use – as distinguished from commercial users. Thus, the definition would exclude commercial recreational facilities which are operated as a business or available to the public on a fee for use basis, such as movie theaters, athletic or country clubs, golf courses, and the like.

Further, the definition is not intended to override, and thus perhaps expand on, existing local zoning ordinances which permit only "residential" use.

However, by including these recreational purposes within the defined term "residential purposes," no change in the plain and traditional meaning of the word "residential" is intended. Thus, the drafters recognize that owners of residential units – *i.e.*, a unit which is designed for use as a residential dwelling – may hold those units for investment purposes, or that individual owners may occasionally or regularly rent their units on an individual or rental pool basis. This is a common practice, for example, with residential communities built near ski or ocean resort areas. Rental occupancy does not change the residential character of the common interest community, or the consumer protections that must be offered to purchasers.

6. Definition (15), "Unit," describes a tangible, physical part of the project rather than a right in, or claim to, a tangible physical part of the property. Therefore, for example, a "time-share" arrangement in which a unit is sold to 12 different persons, each of whom has the right to occupy the unit for one month does not create 12 new units – there are, rather, 12 owners of the unit.

Similarly, in a cooperative, the unit remains a physical part of the real estate; its legal title is vested in the association while the right to possession is held by the unit owner under a proprietary lease. The definition, however, makes it clear that the association's interest in the unit is unaffected by transfers of interests in that unit to or by unit owners. The unit owner's interest is a composite interest, which consists of an ownership interest in the association, coupled with the right to occupy a unit pursuant to a lease.

The definition makes clear that in the case of a cooperative, if a unit owned by a unit owner is sold, conveyed, or encumbered or otherwise transferred by the unit owner, the interest in such unit which is affected is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit.

7. Definition (16), "Unit owner," contemplates that a seller under a land installment contract would remain the unit owner until the contract is fulfilled. As between the seller and the buyer, various rights and responsibilities must be assigned to the buyer by the contract itself, but the association would continue to look to the seller (for payment of any arrears in common expense assessments, for example,) as long as the seller holds title.

The definition makes it clear that a declarant, so long as he owns units in a common interest community, is the unit owner of any unit created by the declaration, and is therefore subject to all of the obligations imposed on other unit owners, including the obligation to pay common expense assessments. This provision is designed to resolve ambiguities on this point which have arisen under several existing state statutes.

In the special case of a cooperative, the declarant is treated as the owner of a unit or "potential unit" to which allocated interests have been allocated, until that unit is conveyed to another.

By defining the term "assessment" as the "sum attributable to each unit and due to the association pursuant to the budget...," the Act ties the term directly to the common expense liability of each unit for the unit's share of the association budget. It also distinguishes each unit's assessment from the other sums that may be due from a unit owner which are not a part of the association's budget and therefore are not included in that unit's assessment.

The definition of "bylaws" reflects the common functional meaning of that term, regardless of what different phrase might be used in the governing instruments to describe this instrument. The definition makes clear that: (i) the bylaws is the instrument that "contains the procedures for conduct of the affairs of the association" - as distinguished from the substantive role played by the declaration; (ii) the functional role of the bylaws remains consistent under the Act even if the association is organized as, for example, a limited liability company where the

term "bylaws" is not used in the statute authorizing such entities and the instrument serving that function is identified as an "operating agreement"; and (iii) amendments to the bylaws are incorporated into the amended document for purposes of this Act.

However, regardless of the name of the instrument used in the declaration, this Act mandates the minimum contents of the bylaws; *see* Section 10. Further, any provision of the State's statutes governing the content of the bylaws or, as appropriate, the operating agreement, to the extent inconsistent with the requirements of Section 10, would be overridden by this Act.

The definition of "Record" in Section 2(12) makes clear that the definition applies only when the term is used as a noun. The definition derives directly from federal and statute statutes governing electronic signatures; the term is commonly substituted for the word "writing" or "written" in other law.

The definition of "Rule" in Section 2(14) focuses on the activities to which they apply. That is, rules either "govern the conduct of persons" or they "govern...the use or appearance of property." In either case, the policy of the Act as expressed in Section 17 is that such restrictions ought to be the subject by unit owner review before adoption, and they must in all instances be reasonable; *see* Section 17(h).

In contrast, Section 17(g) states that the "association's internal business operating procedures need not be adopted as rules". This distinction permits the association's executive board or its management company to adopt or amend at will the wide variety of internal management procedures that govern the association's daily business activities – as opposed to the conduct of persons or the use and appearance of property. It may be helpful to provide a few examples of what the drafters contemplate might be typical internal business procedures that need not be adopted as rules:

- The association wishes to solicit bids from potential contractors for a particular project or service and adopts a procedure for soliciting, reviewing and accepting those bids.
- The board approves a management contract with an outside management company. The management contract contains various procedures governing how the manager is going to carry out its duties with regard to the management of the association.
- The recreation committee adopts a sign-up procedure for using the pool table in the clubhouse.

SECTION 3. NO VARIATION BY AGREEMENT. Except as expressly provided in this [act], the effect of its provisions may not be varied by agreement, and rights conferred by it may not be waived.

Comment

1. The Act is generally designed to provide great flexibility in the creation of common interest communities and, to that end, the Act permits the parties to vary many of its provisions. In many instances, however, provisions of the Act may not be varied, because of the need to protect purchasers, lenders, and declarants. Accordingly, this section adopts the approach of prohibiting variation by agreement except in those cases where it is expressly permitted by the terms of the Act itself.

2. One of the consumer protections in this Act is the requirement for consent by specified percentages of unit owners to particular actions or changes in the declaration. In order to prevent declarants from evading these requirements by obtaining powers of attorney from all unit owners, or in some other fashion controlling the votes of unit owners, this section forbids the use by a declarant of any device to evade the limitation or prohibition of the Act or of the declaration.

3. The second sentence of the section is an important limitation upon the rights of a declarant. Today it is the practice in many jurisdictions, particularly those proscribing expansion of a condominium or planned community by statute, for a declarant to secure powers of attorney from all unit purchasers permitting the declarant unilaterally to expand the condominium or planned community by "unanimous consent" to include new units and to reallocate common element interests, common expense liability, and votes. With such powers of attorney, many declarants have purported to comply with the typical provision of "first generation" condominium statutes requiring unanimous consent for amendments of the declaration concerning such matters. The Act bars this practice.

SECTION 4. OBLIGATION OF GOOD FAITH. Every contract or duty governed by this [act] imposes an obligation of good faith in its performance or enforcement.

Comment

This section sets forth a basic principle running throughout this Act: in transactions involving common interest communities, good faith is required in the performance and enforcement of all agreements and duties. Good faith, as sued in this Act, means observance of two standards: "honesty in fact," and observance of reasonable standards of fair dealing. While the term is not defined, the term is derived from and used in the same manner as in Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

SECTION 5. APPLICABILITY TO NEW COMMON INTEREST COMMUNITIES; EFFECT OF AMENDMENTS. Except as otherwise provided in this [act], this [act] applies to all condominiums in this state that may be used for residential purposes and to all other common interest communities that contain 12 or more units that may be used for

residential purposes and are created within this state after [the effective date of this [act]]. Amendments to this [act] apply to all common interest communities that contain 12 or more units that may be used for residential purposes and are created after [the effective date of this [act]] or are subjected to this [act] by amendment of their declaration, regardless of when the amendment to this [act] is adopted in this state.

Comment

1. The question of the extent to which a state statute should apply to particular common interest communities involves two major conceptual problems: (1) whether the statute should require or permit different results for common interest communities created before and after the statute takes effect; and (2) whether differences in the forms of ownership, and the history of their development, requires different levels of applicability to those various forms.

Two conflicting policies are posed when considering the applicability of this Act to "old" and "new" common interest communities in the enacting State. On the one hand, it is desirable, for reasons of uniformity, for the Act to apply to all common interest communities located in a particular State, regardless of whether the common interest community was created before or after adoption of the Act in that State. To the extent that different laws apply within the same State to different common interest communities, confusion results in the minds of both lenders and consumers. Moreover, because of the inadequacies and uncertainties of common interest communities created under prior law, if any, and because of the requirements placed on declarants and unit owners' associations by this Act which might increase the costs of new common interest communities, different markets might tend to develop for common interest communities created before and after adoption of the Act.

On the other hand, to make all provisions of this Act automatically applicable to all aspects of "old" common interest communities might violate the constitutional prohibition of impairment of contracts. In addition, aside from the constitutional issue, automatic applicability of the entire Act almost certainly would unduly alter the legitimate expectations of some present unit owners and declarants.

Accordingly, the philosophy of this part reflects a desire to maximize the uniform applicability of the Act to all common interest communities in the enacting State, while avoiding the difficulties raised by automatic application of the entire Act to preexisting common interest communities. This Act achieves that balance by, first, selective inclusion of provisions in this Act, and second, making this Act apply only to events and circumstances occurring after the Act's effective date. The comments to Section 6 develop this analysis in further detail.

In carrying out this philosophy with respect to "new projects," Section 5 of the Act applies to all residential common interest communities "created" within the State after the Act's effective date.

2. The second sentence makes clear that if an amendment to the Act is adopted after the Act is initially adopted in any State, the same body of law will thereafter apply to all common interest communities created under the Act or subjected to it. This is the corporate model, and avoids perpetuating the retroactivity issue. The issue of how the Act would apply to common interest communities created **before** the original effective date of the Act is addressed in Section 6.

SECTION 6. APPLICABILITY TO PREEXISTING COMMON INTEREST COMMUNITIES.

(a) This [act] applies to all common interest communities that contain 12 or more units that may be used for residential purposes created in this state before [the effective date of this [act]]; but this [act] applies only with respect to events and circumstances occurring after [the effective date of this [act]] and does not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common interest communities.

(b) The declaration, bylaws, or plats and plans of any common interest community created before [the effective date of this [act]] may be amended to achieve any result permitted by this [act], regardless of what applicable law provided before [the effective date of this [act].

Comment

1. This section states the general rules of applicability of the Act to common interest communities which were created before the effective date of this Act.

2. The Act adopts a novel three-step approach to common interest communities created before the effective date of the Act. First, all provisions of the Act automatically apply to "old" common interest communities, but only prospectively. Second, the Act applies only in a manner which does not invalidate provisions of declarations and bylaws valid under "old" law. Third, under Section 6(b), owners of "old" common interest communities may amend any provisions of their declaration or bylaws, even if the amendment would not be permitted by "old" law, so long as (a) the amendment is adopted in accordance with the procedure required by "old" law and the existing declaration and bylaws, and (b) the substance of the amendment does not violate this Act.

SECTION 7. EXEMPT REAL ESTATE ARRANGEMENTS.

(a) An arrangement between the associations for two or more common interest

communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by this [act].

(c) A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

Comment

This section addresses once again the scope of the Act. It should be considered in connection with the revised definition of "Common Interest Community". The subsections address three separate aspects of this issue:

- Whether contractual arrangements for cost sharing between two or more common interest communities require creation of a third separate common interest community; and

- Whether contractual arrangements for cost sharing between an association and an owner of real estate located outside the common interest community's boundaries require creation of a separate common interest community.

- Whether various shared real estate arrangements – such as party walls or shared driveways – are even subject to this Act.

The following analysis may help frame the issues.

First, there appear to be numerous situations in which a declaration of easements or a

covenant to share costs would suffice to establish the relationship between two parcels without the need to establish another unit owners association to "manage" that relationship. Also, the sharing is not always a matter of shared use – it might be a shared concern for maintenance of public rights-of-way through a community, or shared benefit of a roving security patrol, or sharing of costs of street lights on thoroughfares.

Subsection (a) makes clear that in the case of arrangements between associations, a separate association would not be required in any of the foregoing instances.

However, the drafters did not intend that the section result in an arrangement where the unit owners are left without a remedy in those instances where, for example, the sharing arrangement appears to unreasonably allocate the costs or other important aspects of the arrangement between the parties.

Cost, of course, would be only one concern of unit owners and their associations arising out of an agreement to share in the use of and expenses for other land. The drafters are aware of situations in which developers have included amenities, such as clubhouses, swimming pools, tennis courts, as well as access roads, in one community and then grant to a second community the right to use the facilities together with the obligation to pay a pro rata share of the cost of operation. The decisions concerning the operation and maintenance of the facilities, however, remain with the first community. Such arrangements have the potential to breed frustration, acrimony, and abuse.

Several provisions of the Act offer remedies for circumstances where the two associations may not have equal bargaining power, and those provisions would apply here with equal force. By way of example, if the arrangement were created for purposes of avoiding the limitations of the Act, if the organizers of the arrangement had not acted in good faith, or if the allocated interests between the associations were unlawful, the mandates of Sections 3, 4, and 21 would apply.

In the case of arrangements between associations and third parties other than associations, subsection (b) avoids the need for a separate unit owner association so long as the costs to be borne by the unit owners in the existing association are reflected in the periodic budget for the association and are subject to approval by the unit owners.

Finally, in the case of the arrangements described in subsection (c), while these various forms of simple shared arrangements might arguably satisfy the definition of "common interest community," there is no policy reason to vary common practice, which is to treat these arrangements as governed by the agreement of the parties, supplemented by common law. Accordingly, subsection (c) expressly excludes these arrangements from the Act.

SECTION 8. POWERS AND DUTIES OF UNIT OWNERS ASSOCIATION.

(a) Regardless of the powers and duties of the association described in the declaration and bylaws, the association:

(1) shall adopt and may amend bylaws and may adopt and amend rules;

(2) shall adopt and may amend budgets;

(3) may require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding;

(4) promptly shall provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association;

(5) shall establish a reasonable method for unit owners to communicate among themselves and with the executive board concerning the association;

(6) may suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:

(A) deny a unit owner or other occupant access to the owner's unit;

(B) suspend a unit owner's right to vote;

(C) prevent a unit owner from seeking election as a director or officer of the association; or

(D) withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person; and

(7) may exercise all other powers that may be exercised in this state by organizations of the same type as the association.

(b) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation

of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) the association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(c) The executive board's decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

Comment

This section contains a shortened list of powers of the association, when compared to Section 3-102 of the Uniform Common Interest Ownership Act. It assumes the declaration may have provisions listing a variety of other enumerated powers. The important point is that the powers listed in this section may not be limited in the governing instruments.

Section 8(a)(6) allows the executive board to "suspend and right or privilege of a unit owner that fails to pay an assessment"; this is similar to statutes in other States; *compare, e.g.,* North Carolina § 47F-3-102 (11). However, unlike other States, Section 3-102 (a)(19) specifically precludes suspending the right to vote or the right to run for an association office if a unit owner has not paid her assessments.

Subsection (b) addresses the important question of whether the Association may

"selectively enforce" its rules or whether it is obliged to enforce the rules to the letter in every instance, at the risk of being found by a court to have failed to meet its fiduciary duties, or to have waived its right to enforce the rules in some future instance as a consequence of its failure to enforce the rules in this instance.

In evaluating the alternative outcomes here, the extreme positions are clear. On the one hand, one could assert that the Board's obligation is to strictly enforce or attempt to enforce every alleged breach of the rules, so that the board can never be accused of selective enforcement, favoritism, breach of duty, or waiver.

Alternatively, the board could be held free of any obligation to enforce at any time, without in any way constraining its ability to enforce the same rules at a later time against the same or different persons in those cases where the board decided it would do so.

In the middle is a rule of law that would guide the Board's exercise of discretion. There are a number of theoretical standards that might guide the Board's discretion; they include: (i) the 'business judgment rule'; (ii) arbitrary and capricious; (iii) reasonableness; (iv) bad faith; (v) discriminatory or other improper purposes; (vi) "best interests of the association"; (vii) "good cause"; or (viii) perhaps the Latin maxim "*De minimus non curat lex*" – the notion that "the law does not care about insignificant matters."

There have also been legislative proposals in various states in response to the issue of discretionary rules enforcement, although there does not appear to be a consensus position. Several of those proposals were considered by the drafters.

The text in subsection (b) represents a middle position to guide an Executive Board as it considers whether or how to enforce a particular rule. The text identifies those circumstances where the Board might conclude, in any given case, not to enforce the rules as they have been drafted. These criteria are premised, of course, in all instances on the recognition that the decision-making process of the Executive Board is subject to the "Business Judgment Rule"; *see* Comments to Section 9.

In those circumstances where the Board declines to enforce a rule, nothing in this Act precludes an individual unit owner from seeking independently to enforce the rules in a particular instance pursuant to Section 21.

While subsection (f) deals with the executive board's discretion in enforcing its rules in any single instance, subsection (g) states the basic principle that the board's decision in one instance is not binding in another future instance, under another set of circumstances. At the same time, the subsection emphasizes that the Board may not act in an arbitrary or capricious fashion.

As with every provision of this Act, Section 22 makes clear that "principles of law and equity...supplement the provisions of this Act, except to the extent inconsistent with this Act". In the case of Section 8(g), it is clear that other principles of law and equity, including the law of waiver and course of performance, would supplement this section. Such principles have often

been applied by courts in appropriate circumstances as they consider the extent to which an absence of enforcement over time has modified recorded covenants affecting real estate, and this Act does not modify those principles, except as stated in (g).

SECTION 9. EXECUTIVE BOARD MEMBERS AND OFFICERS.

(a) In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under [insert reference to state nonprofit corporation law]. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(b) An association shall have an executive board created in accordance with its declaration or bylaws. Except as otherwise provided in the declaration, the bylaws, subsection (c), or other provisions of this [act], the executive board acts on behalf of the association.

(c) The executive board may not:

(1) amend the declaration except as provided by law other than this [act];

(2) amend the bylaws;

(3) terminate the common interest community;

(4) elect members of the executive board, but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members; or

(5) determine the qualifications, powers, duties, or terms of office of executive board members.

Comment

1. Subsection (a) makes members of the executive board appointed by the declarant liable as trustees of the unit owners with respect to their actions or omissions as members of the board. This provision imposes a very high standard of duty because the board is vested with great power over the property interests of unit owners, and because there is a great potential for conflicts of interest between the unit owners and the declarant.

2. Subsection (a) is intended to conform the Act to expectations of owners, members of executive boards, and courts. The duty owed by an elected member of an executive board ought to parallel the standard imposed on directors of nonprofit corporations. By making reference to the nonprofit corporate model, members will also obtain the benefits of the business judgment rule, now commonly applied by courts in the nonprofit context; *see, for example*, Levandusky v. One Fifth Avenue Apartment Corp., 75 N.Y.2d 530 (1990).

The Act relies on the business judgment rule as the basis for evaluating the actions of the Board. "As long as directors of a corporation decide matters rationally, honestly, and without a disabling conflict of interest, the decision will not be reviewed by the courts." *Atkins v. Hibernia Corp.*, 182 F3d 320, 324, (5th cir. 1999) quoted in Block, Barton & Radin, The Business Judgment Rule, (5th ed. 1998) in 2002 Supp. Page 6.

> The business judgment rule is a tool of judicial review, not a standard of conduct. The rule (1) shields directors from liability and protects decisions made by directors when the rule's elements – a business decision, disinterestedness, and independence, due care, good faith and no abuse of discretion – are present and a challenged decision does not constitute fraud, illegality, ultra-vires conduct or waste, and (2) creates a presumption that directors have acted in accordance with each of the elements of the rule.

[Block et al at page 110.] In its 2007 decision, the Supreme Court of New Jersey confirmed the continuing vitality of the business judgment rule as the basis for evaluating the activities of the executive board of a unit owners association. *See* Committee for a Better Twin Rivers v. Twin Rivers Homeowners Association, 192 N.J. 344; 929 A.2d 1060 (2007); the decision is expected to be widely followed.

The "fiduciary" standard of care for declarant-appointed directors is appropriate. The law contemplates many forms of fiduciary relationships; among them, the trustee's duty is the highest.

SECTION 10. BYLAWS.

(a) The bylaws of the association must:

(1) provide the number of members of the executive board and the titles of the officers of the association;

(2) provide for election by the executive board or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) specify the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) specify the powers the executive board or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(7) contain any provision necessary to satisfy requirements in this [act] or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(8) provide for any matter required by law of this state other than this [act] to appear in the bylaws of organizations of the same type as the association.

(b) Subject to the declaration and this [act], the bylaws may provide for any other necessary or appropriate matters, including matters that could be adopted as rules.

Comment

1. Because the Act does not require the recordation of bylaws, it is contemplated that unrecorded bylaws will set forth only matters relating to the internal operations of the association and various "housekeeping" matters with respect to the common interest community. The Act requires specific matters to be set forth in the recorded declaration and not in the bylaws, unless the bylaws are to be recorded as an exhibit to the declaration.

2. The Act does not prevent the bylaws from permitting the executive board to delegate all its powers to a manager or to another entity. Whether or not such a delegation were to take place, the law of principal and agent would apply to that relationship, and the executive board would remain responsible for fulfillment of its duties imposed under this Act.

3. As the definition of the term "bylaws" makes clear, the bylaws are intended to address

procedural matters affecting the governance of the association. They are not intended to contain matters that might affect title to real property nor any of the covenants restricting the use of the units or the common property. That is one of the primary reasons why the Act requires that the declaration be recorded on the land records, while the bylaws need not be recorded.

4. The bylaws might include a broad range of qualifications for directors and officers. This Act neither imposes constraints on what these qualifications might be or mandates any such qualifications, other than the requirement that, after the period of declarant control ends, a majority of directors must be unit owners. Other law, of course, such as laws prohibiting various forms of discrimination, may independently impose limits on permissible qualifications.

5. Section 10(a)(6) requires the bylaws to state a method by which the unit owners may amend the bylaws. This provision complements the text in Section 9(c)(2)that precludes the executive board from amending the bylaws.

SECTION 11. UNIT OWNER MEETINGS.

(a) An association shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in accordance with the bylaws.

(b) An association shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the executive board, or unit owners having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. Only matters described in the meeting notice required by subsection (c) may be considered at a special meeting.

(c) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. Notice may be by any method reasonably calculated to provide notice to the person. The notice for any meeting must state the time, date, and place of the meeting and the items on the agenda, including:

(1) a statement of the general nature of any proposed amendment to the declaration or bylaws;

(2) any budget changes; and

(3) any proposal to remove an officer or member of the executive board.

(d) The minimum time to give notice required by subsection (c) may be reduced or waived for a meeting called to deal with an emergency.

(e) Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association.

(f) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with Section 12(g).

(g) Except as otherwise provided in the bylaws, meetings of the association must be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.

Comment

1. This section imposes a variety of requirements dealing exclusively with unit owner meetings, while Section 12 contains new "open meeting" requirements for executive board meetings and meetings of committees which are authorized to act for the Board.

2. The section contains several provisions designed to enhance unit owner participation in unit owner meetings. For example, paragraph (e) requires that unit owners be provided the opportunity to address the executive board during each meeting of the unit owners. While this provision is an important part of the democratization process in community associations, it is implicit that the officers and executive board members have the inherent right to establish reasonable controls over the behavior of unit owners during the meetings. Thus, for example, the board could prevent unit owners from interrupting the regular conduct of business and the time of other speakers, and could, as well, set reasonable limits on the number of speakers at any one meeting, the repetitiveness of unit owner comments, and the aggregate time that unit owners may consume during the meeting.

3. Subsection (b) provides that, with respect to special meetings of the unit owners, "only matters described in the meeting notice...may be considered at" that meeting The purpose of limiting the agenda of a special meeting to the subjects identified in the notice is to allow a

member, who has no concern about the items listed in the notice, to decide not to attend the meeting, secure in the knowledge that other topics cannot be raised and voted on without his or her knowledge. A generic heading such as "New Business" would not be sufficient to permit items to be taken up if they were not otherwise described in the notice. In contrast, of course, at an annual meeting, unit owners are entitled to consider any matter, whether or not on an agenda.

4. Subsection (c) details the procedures and minimum content of the notice sent to unit owners. Importantly, the notice must contain "a statement of the general nature of any proposed amendment to the declaration or bylaws," rather than containing the precise text of any proposed amendment. Thus, the unit owners are entitled to make germane amendments to whatever text is proposed at the meeting; they are not bound to a "yes" or "no" vote on text fixed in that notice.

5. Experience demonstrates that the "town meeting" model for unit owner meetings – where only those persons physically present at a meeting of unit owners may vote – is no longer suited to a considerable number of communities, particularly larger communities and communities made up largely of second homes. Section 14 of this act complements this section; it greatly expands the available procedures for voting, to include absentee ballots and voting without a meeting by electronic means or paper ballots.

6. Section (f) contemplates that the declaration or bylaw may provide for unit owners to "meet" "by telephonic, video or other conferencing method...," so long as such meetings enable sufficient unit owner participation.

7. Subsection (g) provides that meetings of the association must be conducted in accordance with Robert's Rules of Order unless the bylaws otherwise provide. As a consequence of this default rule, it is not necessary for this Act to address a range of procedural issues and, in the normal situation, it will be unnecessary for the association to adopt detailed meeting procedures, either in the bylaws or in separate rules.

By way of example, we might assume that a regularly scheduled unit owners' meeting was properly noticed and held, but that a quorum was not present. In that case, the procedural issue is presented as to whether that meeting might be recessed in these circumstances to enable solicitation of more attendance, or proxies, in order to conduct business. The statute might be drafted to address the issue, either directly or by requiring the bylaws to address it. The default rule of relying on Robert's Rules, however, completely resolves the issue, by expressly permitting a recess in these circumstances. *See* Robert's Rules of Order Newly Revised (10^{th} ed. 2000) at 336-37.

Of course, it may be that the board of an association may prefer a more simplified set of meeting procedures. The bylaws could be amended to adopt such procedure, and many models are available. *See, e.g.*, Nagle, Meetings and Elections: How Community Associations Exercise Democracy (CAI Press, 2005).

SECTION 12. MEETINGS OF EXECUTIVE BOARD AND COMMITTEES.

(a) Meetings of the executive board and committees of the association authorized to act

for the association must be open to the unit owners except during executive sessions. The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

(1) consult with the association's attorney concerning legal matters;

(2) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(3) discuss labor or personnel matters;

(4) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(5) prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

(b) For purposes of this section, a gathering of board members at which the board members do not conduct association business is not a meeting of the executive board. The executive board and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

(c) During the period of declarant control, the executive board shall meet at least four times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community. After termination of the period of declarant control, all executive board meetings must be at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings.

(d) At each executive board meeting, the executive board shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association.

(e) Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each executive board meeting to each board member and to the unit owners. The notice must be given at least 10 days before the meeting and must state the time, date, place, and agenda of the meeting.

(f) If any materials are distributed to the executive board before the meeting, the executive board at the same time shall make copies of those materials reasonably available to unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(g) Unless the declaration or bylaws otherwise provide, the executive board may meet by telephonic, video, or other conferencing process if:

(1) the meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(2) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d).

(h) After termination of any period when the declarant controls the association, unit owners may amend the bylaws to vary the procedures for meetings described in subsection (g).

(i) Instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give

notice to all unit owners of any action taken by unanimous consent. After termination of the period of declarant control, the executive board may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the executive board.

(j) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than [60] days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

Comment

1. This section sets out a series of "open meeting" requirements for meetings of the executive board and any committees to which the board has delegated authority. The provisions are generally consistent with several existing state statutes; *see, e.g.,* Virginia Stat. Ann. § 55-510.1. The highlights of the section are these:

First, the section provides generally that all meetings of the executive committee (except executive sessions) must be open to unit owners. To make this right meaningful, the section requires that unit owners be given notice of those meetings, access to the same materials provided to members of the executive board, and the right to speak at executive board meetings.

Second, while the executive board may meet in executive session, the purposes for which such meetings may be held, and the permissible outcomes of those meetings are considerably limited. Such sessions may only be held in conjunction with a regular or special meeting of the executive board (and therefore noticed to unit owners); no final vote or action may be taken during an executive session; and the purposes for which an executive session may be held are considerably circumscribed.

Third, the Act provides that the board and its members "may not use incidental or social gatherings of board members or any other method to evade" the open meeting requirements of this section.

Fourth, the Act mandates that the executive board meet at least four times a year, and that those meetings "must be at" or "at a place convenient to" the common interest community.

Fifth, while the executive board may meet telephonically, by video or other conferencing method, it may only do so if unit owners have a means to participate in that conference and hear or perceive the proceedings.

Sixth, while the executive board may act without a meeting by unanimous written consent – a procedure uniformly allowed by all corporate statutes – they may do so after the period of declarant control "only to undertake ministerial actions or to implement actions previously taken at a meeting of the executive board."

2. Subsection (e) does provide that the need for notice to unit owners of executive board meetings may be avoided in the event of an "emergency". While the Act does not define that term, the concept plainly includes the notion of "immediate irreparable harm" or other circumstances where the board must act promptly to either avoid an adverse outcome or avoid failing to take advantage of an opportunity. "Emergency" includes the further notion that there is insufficient time from the time the issue came to the attention of the directors to give complete notice to owners.

3. Subsection (j) seeks to strike a balance between the open meeting requirements of subsection (b) and the legitimate expectations of third parties who may rely on the action of an executive board that, in hindsight, was taken without complying with the notice or other constraints imposed on executive board actions by this section. Under this section, a decision of the executive board will be insulated from challenge because of defective notice to unit owners or other failure if the challenge is not brought within 60 days after the minutes of the executive board at which the action is taken are distributed, or those minutes are approved, whichever is later.

SECTION 13. QUORUM.

(a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if persons entitled to cast [20] percent of the votes in the association:

(1) are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots solicited in accordance with the association's procedures which have been delivered to the secretary in a timely manner; or

(3) are present by any combination of paragraphs (1) and (2).

(b) Unless the bylaws specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the executive board

unless a greater vote is required by the declaration or bylaws.

Comment

Mandatory quorum requirements lower than 50 percent for meetings of the association are often justified because of the common difficulty of inducing unit owners to attend meetings. The problem is particularly acute in the case of resort common interest communities where many owners may reside elsewhere, often at considerable distances, for most of the year.

SECTION 14. VOTING; PROXIES; BALLOTS.

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c), or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d).

(b) At a meeting of unit owners the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required by this [act] or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without

being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least [three] days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person may not cast undirected proxies representing more than [15] percent of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than [three] days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(1) this section applies to lessees as if they were unit owners;

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters; and

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

Comment

1. Subsection (e) addresses an increasingly important matter in the governance of common interest communities: the role of tenants occupying units owned by investors or other persons. Most present statutes require voting by owners in the association. However, it may be desirable to give lessees, rather than lessors, of units the right to vote on issues involving day-to-day operation both because the lessees may have a greater interest than the lessors and because it is desirable to have lessees feel they are an integral part of the common interest community.

2. This section contains provisions enabling unit owners to cast ballots in several ways besides during a physical meeting of the unit owners. It offers a very broad range of voting options.

The current text incorporates both existing and proposed laws from a significant number of states' corporate and common interest community statutes, as well as existing provisions of the Model Nonstock Corporation Act, and proposed amendments to that model act that were pending at the time this Act was promulgated.

3. Section 14(d) permits voting by ballot without the need for a meeting; it borrows significantly from Florida statutes governing the election of directors of the unit owners association; *see* Fla. Gen. Stat. 718.112 (Bylaws) (2)(d)2, 3.

4. Proxy voting has been the subject of some controversy in the states, primarily as a consequence of some unit owners seeking to collect very large numbers of undirected proxies to be cast at meetings where contested matters are to be voted on. While the declaration and bylaws may impose further restrictions on proxy voting, this section imposes only two: subsection (c)(5) limits the validity of a proxy only to the meeting at which it is cast; and (c)(6) limits the proxies that any one person may cast to a percent set by statute.

5. Subsection (g) confirms that votes allocated to units owned by the association will be counted towards the quorum for any meeting, but will otherwise not affect the outcome of the voting by other unit owners.

SECTION 15. LIMITATIONS ON FORECLOSURE.

(a) Regardless of provisions in the declaration, an association may not commence an action to foreclose a lien on a unit under this section unless:

(1) the unit owner, at the time the action is commenced, owes a sum equal to at least [three] months of common expense assessments based on the periodic budget last adopted by the association pursuant to Section 20 and the unit owner has failed to accept or comply with a payment plan offered by the association; and

(2) the executive board votes to commence a foreclosure action specifically against that unit.

(b) Unless the parties otherwise agree, the association shall apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

(1) unpaid assessments;

(2) late charges;

(3) reasonable attorney's fees and costs and other reasonable collection charges; and

(4) all other unpaid fees, charges, penalties, interest, and late charges.

(c) If the only sums due with respect to a unit are fines and related sums imposed against the unit, a foreclosure action may not be commenced against the unit unless the association has a judgment against the unit owner with respect to the fines and related sums and has perfected a judgment lien against the unit under [insert reference to state statute on perfection of judgments].

(d) Every aspect of a foreclosure, sale, or other disposition under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable.

Comment

1. Few issues are more contentious in common interest communities than the prospect of unit owners losing their homes as a consequence of non payment of common charges – and the loss of all or most of their equity – when the association forecloses. The reaction in state legislatures in recent years has been widespread.

At the same time, it is crucial that the association be able to secure timely payment of common charges in order to provide services to all the residents of the common interest community.

In an effort to balance these competing interests, this section provides several safeguards governing foreclosure of liens for unpaid common charges. These new procedures may be summarized as follows:

First, subsection (a) bars foreclosure for sums that are less than 3 months of common charges;

Second, the same subsection also requires the association board, to first, offer the delinquent owner a payment plan which the owner rejects, and second, expressly approve each foreclosure action;

Third, subsection (b) requires that payments of delinquent assessments be applied first to principal rather than to interest and fees, in order to avoid the usual practice of accruing additional interest and late charges as the monthly fees remain unsatisfied while the attorneys fees and interest are paid first.

Fourth, subsection (c) bars any foreclosure for fines alone unless the association first secures a personal judgment against the unit owner.

Finally, Subsection (d) requires that if a foreclosure does go forward, any sale of a unit must be commercially reasonable. In the first reported case of foreclosure arising in a state that has adopted this Act, the court required that the sale be reasonable. *See* Will v. Mill Condominium Owners Association et al, 176 VT 380, 848 A2d 336 [2004].

These special procedures would comprise an overlay on existing state foreclosure procedures, whether judicial or non-judicial. Taken together, they respond in a concise but responsible way to the widespread reports of abuses in this field. Hopefully, they will also be viewed by the various States as a responsible and balanced response to the issues confronting elected officials, defaulting unit owners and homeowners association directors with a fiduciary responsibility to maintain the property.

2. In requiring a delay for 3 months in commencement of a foreclosure proceeding, subsection (o) imposes some risk on the association. Since, at best in some states, the association's lien has only a limited priority over that of a first mortgage, anything which delays the commencement and completion of a foreclosure by the association, but does not result in the unit owner bringing his or her account current, may be seen as simply raising the cost to the association, and, therefore, to all of the other unit owners who are paying their common charges on time.

3. The reaction of some legislators to this Section may depend on the extent to which foreclosure actions in the respective states are subject to judicial supervision. In states where non-judicial foreclosure is either not available or not used in association lien foreclosures, the active role played by the court may minimize the need for certain of the borrower protections in this section.

SECTION 16. ASSOCIATION RECORDS.

(a) The association must retain the following:

(1) detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2) minutes of all meetings of its unit owners and executive board other than executive sessions, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association;

(3) the names of unit owners in a form that permits preparation of a list of the names of all unit owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;

(4) its original or restated organizational documents, if required by law other than this [act], bylaws and all amendments to them, and all rules currently in effect;

(5) all financial statements and tax returns of the association for the past three years;

(6) a list of the names and addresses of its current executive board members and

officers;

(7) its most recent annual report delivered to the [Secretary of State], if any;

(8) financial and other records sufficiently detailed to enable the association to comply with other requirements of law;

(9) copies of current contracts to which it is a party;

(10) records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and

(11) ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b) Subject to subsections (c) and (d), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

(1) during reasonable business hours or at a mutually convenient time and location; and

(2) upon [five] days' notice in a record reasonably identifying the specific records of the association requested.

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

(1) personnel, salary, and medical records relating to specific individuals;

(2) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(3) existing or potential litigation or mediation, arbitration, or administrative proceedings;

(4) existing or potential matters involving federal, state, or local administrative or

other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;

(5) communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work- product doctrine;

(6) information the disclosure of which would violate law other than this [act];

(7) records of an executive session of the executive board; or

(8) individual unit files other than those of the requesting owner.

(d) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.

(e) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner.

(f) An association is not obligated to compile or synthesize information.

(g) Information provided pursuant to this section may not be used for commercial purposes.

Comment

1. There are two significant policy issues connected with the association's records: first, what records the association must retain, and second, who has access to those records. This section addresses both issues.

The sections provisions are generally consistent with the cognate provisions of the Revised Model Nonstock Corporation Act, supplemented by specific provisions from other more modern State enactments and proposals in the homes association field. In this latter regard, the amendments, for example, authorize a unit owner to have access to a mailing list of unit owners, although the association may retain the right to mail materials to unit owners at their last known addresses, in order to maintain the unit owners' privacy; and (ii) insure that minutes of all meetings must be kept.

2. Subsection (a) outlines the records that the Association must retain. The subsection generally avoids any substantive requirements as to how the Association's financial records are

to be maintained, relying simply on the obligation to retain "detailed records of receipts" and "appropriate accounting records," "all financial statements and tax returns for the past 3 years" and, as in the original Act, "financial and other records sufficiently detailed to enable the association" to comply with law. The Act rejects any proposal that it require records to be maintained in accordance with "generally accepted accounting principles"; there are simply too many associations for which that would be an unnecessary and burdensome requirement.

4. The rules of various Bar associations make it imprudent for this Act to characterize the files of an attorney representing the association as property of the association and thereafter to assert that those files are nevertheless exempt from disclosure. For that reason, the Act does not address the status of an attorney's records, but subsection (c)(5)does make clear that communications with the association's attorney will generally be exempt from disclosure.

5. Many associations, especially smaller ones, may not have a complete set of records going back to the first organization of the association. This may be attributable to many reasons, and often are not the fault of the association or its current leadership. For example, the original declarant may not keep adequate records or may have failed to turn them over at transition. Managers may fail to turn records over when their contracts expire or are terminated.

In either of these cases, the cost of suing to obtain the missing records is prohibitive, or certainly out of proportion to the loss or inconvenience caused by the missing documents. In many smaller communities, the minutes and other non-financial records are kept by a volunteer officer of the association. If someone dies, is taken ill or moves away, the records are often lost. While this reality may impede the practical realization of the requirements in this Act, a goal of the section would be that over time, those "ancient" records may become of less practical importance in older associations, while newer associations will be guided by the requirements of this Section to adopt sound record keeping practices from the outset.

6. Subsection (b)(1) permits the parties to agree on a mutually acceptable time and place for the inspection of the records. If they do not agree, the subsection provides that the inspection shall take place "during reasonable business hours or at a mutually convenient time and location." Another concern has to do with smaller self-managed associations where the records may be kept by a unit owner who works during the day. If the volunteer treasurer cannot easily leave his or her job during the day to meet with a unit owner, it may be unreasonable to insist that the unit owner, or the unit owner's attorney or accountant, have the power to make the treasurer take a day off from work.

SECTION 17. RULES.

(a) Before adopting, amending, or repealing any rule, the executive board shall give all unit owners notice of:

(1) its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(2) a date on which the executive board will act on the proposed rule or amendment after considering comments from unit owners.

(b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any new or revised rule.

(c) An association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

(d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display on a unit or on a limited common element adjoining a unit of the flag of this state, or signs regarding candidates for public or association office or ballot questions, but the association may adopt rules governing the time, place, size, number, and manner of those displays.

(e) Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

(f) An association may adopt rules that affect the use of or behavior in units that may be used for residential purposes, only to:

(1) implement a provision of the declaration;

(2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners; or

(3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

(g) An association's internal business operating procedures need not be adopted as rules.

(h) Every rule must be reasonable.

Comment

1. This section addresses in a single location the Act's provisions concerning rules, including procedures governing how rules are to be adopted, and several constraints on what rules may address. The section also addresses constraints on the association's ability to regulate unit owner behavior, consistent with increasing sentiment to this effect in a number of states.

2. Subsections (a) and (b) enable unit owners to be aware of and involved in the rules adoption process. Under these procedures, the association must notify unit owners of its intention to engage in changing the rules, and provide owners the text of any proposed change. Unit owners are also entitled to submit comments on the proposed rules, and to know of the date before which those comments may be submitted for consideration. Finally, under subsection (b), after a rule has been changed, the association must notify unit owners of the change, and provide them a copy of any new or revised rule.

3. The section addresses in several ways the subject of how and when the unit owners may be subjected to constraints on the owner's ability to make changes on the exterior appearance of a unit, or engage in construction activity on a unit – including a lot – that would be visible from outside the unit.

It is increasingly common throughout the United States for associations to assume the power to establish and enforce design criteria and control the exterior appearance of units, whether those units are in high rise condominiums, townhouses or single family homes on individually-owned lots. It is often asserted that the power of the association to maintain a uniformly attractive and consistent appearance throughout a community adds considerably to the value and desirability of many of these communities.

At the same time, anecdotal evidence suggests that many of the decisions made during the design approval process have been controversial and, in some instances, are subject to abuse by those charged with enforcing the design criteria.

This Section confirms the ability of the association to adopt such a process, but subject to significant constraints intended to protect the interests of individual unit owners.

This section first provides in subsection (c) that the ability of the association to regulate the design process must be affirmatively reserved in the declaration. It is common for the developer of a project to reserve such a right for itself to regulate aesthetic changes, and this requirement tracks that typical outcome.

Second, assuming the authority exists in the declaration, the section requires that the rules of the design committee must be formally promulgated by the executive board, including a procedure for prompt consideration of an application. The rules must also describe the consequences flowing from the failure of the design committee or other group charged with enforcement of the criteria to act on an application within the time frame stated. This does not mean that the necessary effect of that failure is that the application will be deemed approved; the rules may state a different consequence, as they are permitted to do. As a practical matter, however, one might expect that in the usual case, the parties to an application pending before a design committee may choose to formally agree to extend the time within which the committee is otherwise required to act, in order to avoid the consequences of a failure to act, and nothing in this Act is intended to affect the parties' ability to do so.

4. The Act creates a significant interplay between the declaration and the association's rules when the subject is the possibility of a change in a permitted "use occupancy, or behavior", as that term is used in subsection (f)(2).

Basically, the association's ability to adopt rules affecting use of or behavior in units is restricted to implementing provisions of the declaration, or regulating "any behavior in or occupancy of a unit which ...adversely affects the use and enjoyment of the units or the common elements by other unit owners." An obvious example of the latter would be noise regulations.

5. Subsections (d) and (e) expand existing federal law mandating that unit owners be allowed to display the flag of the United States, *see* The Freedom to Display the American Flag Act of 2005, Public Law 109-243 to provide greater freedom of action to unit owners. These sections increase the rights of unit owners to display flags of the enacting State, and political signs on their units. Like the federal law, the association is entitled to adopt regulations governing the time, place, size, number and manner of those displays." Similarly, the unit owners are entitled under subsection (e) to peacefully assemble on the common elements to consider matters related to the common interest community.

6. In perhaps the most significant change affecting rules, subsection (h) requires all rules to be "reasonable." The reasonableness standard, unlike the business judgment rule, is likely to lead to considerable controversy over the impact of particular rules; it may also lead to more constraint in the adoption of a variety of rules, which some unit owners may find onerous.

SECTION 18. NOTICE TO UNIT OWNERS.

(a) An association shall deliver any notice required to be given by the association under this [act] to any mailing or electronic mail address a unit owner designates. Otherwise, the

association may deliver notices by:

(1) hand delivery to each unit owner;

(2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(3) electronic means, if the unit owner has given the association an electronic address; or

(4) any other method reasonably calculated to provide notice to the unit owner.

(b) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

Comment

1. This section recognizes that electronic notice to unit owners should only be permitted if unit owners agree to receive it. The new additional forms of notice are electronic transmissions and "(4) any other method reasonably calculated to provide notice to the unit owner." However, even if authorized, electronic notice would not be mandatory and the section would allow, depending on the circumstances, posting notice on bulletin boards, placing large and legible "sandwich boards" at the entrances to the common interest community, or other methods. As a consequence, the Act does not designate the method of giving notice in particular instances.

2. Just as the Act does not require that notice be given in a particular manner, it also does not require that the bylaws must specify the method by which notice is to be given. However, there is no reason why either the declaration or the bylaws could not specify a particular form or method of giving notice to the unit owners, and such a requirement would be binding on the association. Whether or not the documents designate a specific form of notice, the declaration cannot override the statement in subsection (b) that protects actions taken at a meeting despite the failure of the notice to actually be delivered, so long as the notice was given in good faith.

3. Note that whatever form of notice may be used or required in a particular common interest community, Section 12(c) requires that the unit owners in that community receive the same notice of a meeting of the executive board that is given to the members of the board.

SECTION 19. REMOVAL OF OFFICERS AND DIRECTORS.

(a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, but:

(1) a member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;

(2) if a member may be elected or appointed pursuant to the declaration by persons other than the declarant or the unit owners, that member may be removed only by the person that elected or appointed that member; and

(3) the unit owners may not consider whether to remove a member of the executive board or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(b) At any meeting at which a vote to remove a member of the executive board or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

Comment

1. This section is intended to simplify the procedures available for removal of officers or directors. Thus, for example, while the section speaks in terms of a "meeting" of unit owners held for the purpose of removal, the section should be read in conjunction with Section 14 on voting. There, unless the declaration or bylaws prohibits or limits the various means by which voting may be conducted, the full panoply of decision making by vote would be available in the context of a "meeting" to consider removal. Accordingly, subject to any limitations contained in the community's documents, a removal vote could be taken by electronic or paper ballot.

2. For the same reasons discussed in comment 1, proxies will commonly be permitted in recall votes. The drafters recognize that generally, if both sides are soliciting

proxies, the unit owners are likely to be given a realistic opportunity to choose between positions. In any event, there is no reason to distinguish those votes where proxies are permitted from others where they are prohibited.

3. While this Act simplifies the procedures for a removal vote, other provisions of the new section are designed to protect the reasonable expectations of other stakeholders in the process, and to reflect a basic sense of fairness. Thus, for example, the Act requires that any person who is subject to a removal vote must be given an opportunity to speak before the vote. Further, if the vote were to be taken by ballot without a meeting, then the procedures in the Act that allow informational materials to be distributed before the ballots are due would satisfy the policy underlying this provision.

Similarly, the Act provides that no one but the person who appoints or elects a director may remove that director, thus protecting the legitimate interests of parties who may be entitled under the provisions of a particular community to appoint "outside" directors.

SECTION 20. ADOPTION OF BUDGETS; SPECIAL ASSESSMENTS.

(a) The executive board, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than [30] days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the budget. Unless at that meeting a majority of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

(b) The executive board, at any time, may propose a special assessment. Except as otherwise provided in subsection (c), the assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) and the unit owners do not reject the proposed assessment.

(c) If the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency:

(1) the special assessment shall become effective immediately in accordance with the terms of the vote;

(2) notice of the emergency assessment must be provided promptly to all unit owners; and

(3) the executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

Comment

1. Subsection (a) requires at least an annual budget for the association. The Section permits the unit owners to disapprove any proposed budget, but a rejection of the budget does not result in cessation of assessments until a budget is approved. Rather, assessments continue on the basis of the last approved periodic budget until the new budget is in effect.

2. The drafters extensively considered the issue of whether state law should mandate that the declarations of all common interest community associations create a reserve fund for the replacement of common elements as they become necessary and, if so, the extent to which they should be mandated. This is a subject of considerable scholarly debate and widely varying statutory treatment in the States.

As drafted, Section 20(a) requires the association to provide a summary of the budget – including any provisions for reserves and a statement of the basis on which the reserves are calculated. However, the Act does not require that the association maintain any reserves.

This is not the policy of all States. Some states either mandate that reserves be maintained or establish a default rule that such reserves be created in the absence of an affirmative vote by the association membership not to create reserves. Other states require that the association board undertake periodic studies of the association's need for reserves.

It is also true that the underwriting guidelines used by Fannie Mae when deciding whether to purchase mortgages in common interest communities, requires in condominiums – but not in planned communities – not only that the association maintain reserves but that those reserves be "adequate," without defining the meaning of that word.

Evidence suggests that the needs, practices and expectations of unit owners in common interest communities differ widely, depending on, for example, the size, age, location and design of the physical structures as well as the age, economic circumstances and other demographic

characteristics of the unit owners.

For example, small, self-managed associations commonly will maintain minimal reserves and will typically self-assess for repairs as needed. Other larger common interest communities, particularly in high maintenance buildings, may choose to establish substantially higher reserves.

On the other hand, it appears that very few associations maintain reserves at a level which would be actuarially required by evaluating the useful life of each component of the building and then accumulating reserves through increases in the monthly common charges paid by each owner, based on a schedule reflecting each component's useful life.

Associations confront the same choices that a single family homeowner confronts in thinking about, for example, the future need to replace the roof on her house. That owner has at least three choices: (i) she can set aside a sum of money each month in a segregated fund – perhaps even calling it a 'reserve' fund – so that when the roof or other parts of her home need to be replaced, she will have the needed funds; (2) she can maintain savings which are not segregated and pay cash from those savings at the time the roof replacement occurs; or (3) she can borrow the needed funds, and pay that money back during the years when she is enjoying a dry home. She can also use a combination of these techniques. Today, associations are increasingly engaged in borrowing as an alternative to self-funding of reserves by unit owners who may, in fact, be unable to realize the economic value of those reserve payments if the sell their units early in the life of the project.

The drafters were also mindful of the impact of a possible law mandating reserves on the needs of the elderly and those of limited economic means. In practice, older unit owners often resist reserves, while younger families may perceive a greater long term value in their creation. There are also special concerns for lower income owners in common interest communities, where poorer owners may default on their mortgages and abandon their units because of their inability to maintain mortgage payments and monthly common charges. If a statute were to mandate fully funded reserve payments, policy maker should then be concerned with two possible unintended consequences: first, such a mandate might so raise the monthly common charges that many potential buyers might be disqualified from homeownership; and second, the increases in charges might accelerate the collapse of common interest communities housing marginal income existing owners, who might abandon their units in increased numbers. Neither of these outcomes would be desirable.

At the same time, the drafters understood the natural interest of elected officials, who may often be faced with constituent demands that government 'do something' about a common interest community that has not prudently managed its affairs, with the result that needed repairs have not been made and the needed funding is not readily identifiable.

This Act does not require a particular outcome for reserves. It simply requires that the budget must affirmatively address the issue one way or the other. Over the long term, better education of declarants and unit owners alike, and the growth of 'best practices' in the common interest community field under the leadership of national and state interest groups, must provide the optimal outcome in each particular circumstance.

3. New subsection (b) addresses the issue of special assessments. The policy of the subsection assumes that, except in the case of an emergency, the executive board should follow the same procedures as apply in adoption of the regular periodic budget of the association.

On the other hand, it is not unusual for the executive board to be confronted with an emergency. In that event, as discussed in subsection (c), if 2/3s of the executive board determine that an emergency exists, the board may dispense with the unit owner vote and proceed directly to adopt a special assessment. The balance of subsection (c) describe various safeguards designed to avoid abusive use of the emergency special assessment.

Note that the term "special assessment" is not defined. However, as used in subsection (b), it refers to any assessment that is not part of the regular budget. Given the safeguards contained in (b), it is not likely that the procedure will be commonly abused.

4. The Act as presently drafted does not limit or prohibit the imposition of "so-called" transfer fees. It does require their disclosure.

Some courts, in reviewing similar statutory provisions, have held that transfer fees are not permitted; *see, e.g.,* Micheve, LLC vs.Wyndham Place at Freehold Condominium Association, 885 A.2d 35 (N.J. Super. Ct. App. Div. 2005.).

In any event, this Act takes no position on the validity or suitability of "transfer fees", whether imposed by the declarant, the association, or some third party. Plainly, there are abusive circumstances where some persons assert the right to be paid a fee on transfer of title; some states have sought to regulate such efforts. In other cases, advocates assert that transfer fees can measurably assist in the betterment of common interest communities, despite the fact that the fees are generally levied against persons who are departing from those communities and are therefore not likely to enjoy whatever theoretical benefits are to be realized as a consequence of these fees. The subject becomes more significant, of course, depending on the magnitude of the fees, and the extent to which the fees are paid at a time of rapidly increasing – rather than decreasing – property values.

SECTION 21. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION; ATTORNEY'S FEES.

(a) A declarant, association, unit owner, or any other person subject to this [act] may bring an action to enforce a right granted or obligation imposed by this [act], the declaration, or the bylaws. [Punitive damages may be awarded for a willful failure to comply with this [act].] The court may award reasonable attorney's fees and costs.

(b) Parties to a dispute arising under this [act], the declaration, or the bylaws may agree

to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) a declarant may agree with the association to do so only after the period of declarant control has expired; and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.

(c) The remedies provided by this [act] shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential or special damages may not be awarded except as specifically provided in this [act] or by other rule of law.

Comment

1. This section provides a general cause of action or claim for relief for failure to comply with the Act by either a declarant or any other person subject to the Act's provisions. Such persons might include unit owners, the declarant, or the association itself. A claim for appropriate relief might include damages, injunctive relief, specific performance, rescission, or reconveyance if appropriate under the law of the State, or any other remedy normally available under state law. The section specifically refers to "any person or class of persons" to indicate that any relief available under the state class action statute would be available in circumstances where a failure to comply with this Act has occurred. This section, in bracketed text, permits punitive damages to be awarded in the case of willful failure to comply with the Act and also permits court costs and attorney's fees to be awarded in the discretion of the court to any party that prevails in an action.

The language of subsection (a) is intentionally broad, and emphasizes the traditional authority of a court in equity to fashion a remedy suited to the circumstances of the case. Importantly, the provisions of this section would apply with equal force to a violation of either this Act or the declaration or bylaws by "any person" besides the declarant – including, for example, the association in its dealings with unit owners, a property manager or unit owners whose own behavior violates those same laws or instruments.

In appropriate cases involving association or executive board activities, the court might grant relief in the form of requiring new elections, removal of officers from office, and orders requiring offending parties to make the association whole for improperly expended funds. A civil action may lie, in an appropriate case, for failure of the executive board to comply with the "open meeting" requirement of Section 12. These examples are not intended to exhaust the traditional authority of a judge to grant "appropriate relief", and that authority is emphasized by the specific grant of discretion to authorize punitive damages or attorneys fees, as the

circumstances warrant.

2. Subsection (b) reflects the Conference's judgment that resolving disputes by non-judicial means is a desirable outcome, subject to the limitations contained in this section.

3. Nothing in this section prohibits a unit owner from seeking independently to enforce any provision of the declaration, bylaws or rules. However, limitations in those instruments may require that the unit owner participate in some form of alternative dispute resolution before commencing suit.

SECTION 22. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW; CONFLICTS. The principles of law and equity, including the law of corporations [,] [and] any other form of organization authorized by the law of this state [,and unincorporated associations], the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this [act] except to the extent inconsistent with this [act]. If there is a conflict between this [act] and other law of this state, this [act] prevails.

Comment

1. This Act displaces existing law relating to common interest communities and other law only as stated by specific sections and by reasonable implication therefrom. Moreover, unless specifically displaced by this statute, common law rights are retained. The listing given in this section is merely an illustration, no listing could be exhaustive.

2. The bracketed language concerning unincorporated associations should be deleted if the enacting State requires incorporation of a unit owners' association

SECTION 23. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Comment

This Act should be construed in accordance with its underlying purpose of making the law uniform with respect to all forms of common interest communities, as well as the purposes

stated in the Prefatory Note of simplifying, clarifying, and modernizing the law of common interest communities, promoting the interstate flow of funds to common interest communities, and protecting consumers, purchasers, and borrowers against common interest community practices which may cause unreasonable risk of loss to them. Accordingly, the test of each section should be read in light of the purpose and policy of the rule or principle in question, and also of the Act as a whole.

SECTION 24. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

In 2000, Congress enacted the "Electronic Signatures in Global and National Commerce Act", 106 PUB.L.NO. 229, 114 Stat. 464, 15 U.S.C. § 7001, *et seq.* (popularly known as "E-Sign"). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of E-Sign, entitled "Exemption to preemption", provides in pertinent part that:

> (a) A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 with respect to State law only if such statute, regulation, or rule of law–
>
> (1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999" [with certain exceptions] or
>
> (2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if [they meet certain criteria] and
>
> (B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement that the act "make[] specific reference to this Act" pursuant to 15 U.S.C. § 7002(a)(2)(B) if the act contains a provision authorizing electronic records or signatures in place of writings or written signatures.

VISITOR REGISTRATION SHEET

House Select Committee on Homeowners Associations ~~October 20~~ 12-6-2010, 2010

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MIKE SHIFLETT	INTERNEIGHBORHOOD COUNCIL (DURHAM) COMMUNITY ASSOCIATION / HOMEOWNER BOARD DIRECTOR
Jerry Maples	Lead Mine Lake HOA
Jessi Hayes	NC Home Builders
Carlen Ruff	NC Housing Coalition
Cady Thomas	NCAR
Kim Crouch	NCBA
Sara Burrows	Carolina Journal
Ole Madsen	Oyster Harbour HOA, VP BOD
DIANA STARLING	RALEIGH, NC
HOWARD RIPPETOE	1000 Centre Green Way, CARY, NC 27513 VNH-RIPPETOE ASSOC. - RESERVE CONSULTANT
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

House Select Committee on Homeowners Associations ~~October 20~~, 2010
Name of Committee **Date** 12/6/2010

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Veronica L. Bitting	Homeowner 2824 W. Jameson Rd. Raleigh 27604
Lachelle Pulliam	Homeowner- Griffis Glen HOA President 4029 Griffis Glen Dr. Raleigh 27610
Tim Pendergast	321 Lake Royale Louisburg NC 27549
Willard Vanderbeek	9024 Lake Royale Louisburg NC 27549
Lou DeVita	Homeowner 222 Creekland Outlaw Circle Sunset Beach 28468
Frank Wiedman	Homeowner 470 Egret Drive Sunset Beach, NC 28468
John McInerney	Talis Management Group
Lou Travers	Kelton Village Loop #1031

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

January 6, 2011

MEMORANDUM

TO: Members, House Select Committee on Homeowners Association
FROM: Representatives Jennifer Weiss and William McGee
SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Wednesday	January 19, 2011	3:00 pm	421, LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Jayne Nelson at 919-733-5747 or Cindy Douglas at 919-715-3010.

cc: Committee Record _X_
Interested Parties _X_

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

AGENDA

January 19, 2011
3:00 p.m.
Room 421 LOB

I. Introduction
Representative Jennifer Weiss, Co-Chair, Presiding
Representative William McGee, Co-Chair

II. Consideration of Proposed Legislation

III. Consideration of Draft Final Report

IV. Adjournment

HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

MINUTES
JANUARY 19, 2011

Representative Jennifer Weiss, Co-Chair, called the meeting of the House Select Committee on Homeowners Associations to order at 3:04 p.m. in Room 421 of the Legislative Office Building. Members present at the meeting were Co-Chair William McGee, Representatives Julia Howard, George Cleveland and Beverly Earle and public member Chris Heagarty. Also present were staff members Karen Cochrane-Brown, Jennifer McGinnis, Bill Patterson, and Joe Moore, and committee assistants Cindy Douglas and Jayne Nelson. Co-Chair Weiss thanked the Sergeants-at-Arms (See Attachment #1, Sergeants At Arms Register) and welcomed members, staff and visitors. (See Attachment #2, Visitor Registration)

Co-Chair Weiss stated that the committee had been working on proposed legislation for the last several months and would be considering that as well as the draft final report. Co-Chair Weiss asked Co-Chair McGee if he had any comments to make before the meeting proceeded. Co-Chair McGee stated that he did not. Co-Chair Weiss stated that the members should have draft legislation before them and that staff would be walking the committee through the information, with each staff member having a specialty area. Ms. McGinnis, Research Division Staff, stated that members should refer to their packet of information. She stated that the first document in the packet was a memo that the Co-Chairs requested because of impairment of contracts issue that had been of concern regarding the proposed options. (See Attachment 3) Ms. McGinnis stated that the draft bill applied the Uniform Common Interest Owners Act approach to effective dates; this is how the General Assembly handled the original enactment of the Planned Community Act in 1999 and the enactment of the Condominium Act in 1985. Section 10 of the proposed legislation, (See Attachment 5, pages 13-14), handles applicability and effective date in that same manner, thus it would apply to new associations from the effective date of the bill, would apply to old associations provided that they do not have contrary provisions in their declarations and bylaws, and would allow pre-existing communities to amend their declarations to conform with the Act if that would be their will.

Co-Chair Weiss asked if committee members had any questions about the impairments of contracts. Public member Heagarty stated that the government does, through statute or regulations, impair contracts all of the time and it is a matter of satisfying the balance of the regulations. Ms. McGinnis confirmed this statement.

Ms. McGinnis continued and stated that she would be explaining a very brief summary of the provisions of the bill draft and explained that she would proceed section by section and explained each section. (See Attachment 5) In section 1, Ms. McGinnis explained

that this part of section 1, except for certain stylistic and technical changes, was nearly identical to that provision which is found in the Homeowners Bill of Rights Act. In Section 2(a) and 2(b), Ms. McGinnis explained that these provisions are found within the Homeowners Bill of Rights Act concerning the adoption of budgets and imposition of special assessments. Ms. McGinnis explained that the North Carolina law for planned communities did have processes for adoption of budgets, but did not speak to the imposition of special assessments; therefore section 2(a) deletes the provision in North Carolina law that dealt with the adoption of budgets and it has been covered in 2(b) so there is a "melding" between North Carolina law and the Uniform Act provision. Ms. McGinnis explained that Section 3 is the provision from the Uniform Act on open meetings; there was/is no such requirement under the Planned Community Act so this is nearly identical to that found within the Uniform Act, just synced up to the new law.

Karen Cochrane-Brown, Research Division Staff, explained Section 4, dealing with foreclosure. (See Attachment 5) Ms. Cochrane-Brown explained that Section 4 incorporates the change that the committee agreed to at the last meeting in regards to foreclosures, changing the provisions of the Planned Community Act with regards to liens for assessments and the changes were also a result of the Uniform Common Ownership Interest Bill of Rights suggestions with regards to foreclosures. Ms. Cochrane-Brown explained the changes in the Section. She explained that the recommendation from the Uniform Common Ownership Interest Bill of Rights was that foreclosure proceedings could not commence unless a payment was least 3 months past due and the owner had refused to accept or comply with an offer for paying in installments, so that provision was added as well. Ms. Cochrane-Brown explained that another recommendation that came from the Uniform Common Ownership Bill of Rights was the suggestion that a priority system be established in terms of payments that are made, (see page 5, sub-section (b1) of Attachment 5). Ms. Cochrane-Brown explained Sub-Section (e2) of Attachment 5; and explained that this Section also added the suggestion of Co-Chair McGee that if the lot owner subsequently fails to comply with the payment schedule that the lot owner would only be given a 30 day window before the foreclosure process begins.

Ms. McGinnis explained Section 5 of Attachment 5. (See Attachment 5) She explained that the new language in Section 5 mirrors that of the Homeowners Bill of Rights Act for the records that an association must maintain and that the language was far more exhaustive and descriptive than what is required in existing law; and that there is also added language about provisions of the records it provides upon request to owners. Ms. McGinnis noted that during the last meeting at least one member had requested that the time period found in the Homeowners Bill of Rights Act be changed for turn around of records upon request from 5 days to 15 days, which is reflected on page 7, line 40 of Attachment 5. Ms. McGinnis explained Section 6 of Attachment 5 and stated that the language was identical to the Homeowners Bill of Rights Act; the Planned Community Act does not reference alternative dispute resolution.

Ms. McGinnis stated that this was a permissive provision and is not mandatory so it should be considered by the committee.

Co-Chair Weiss introduced Mr. Bill Patterson, Research Division Staff, and he explained Sections 7, 8 and 9. (See Attachment 5) He explained that Section 7 includes two additional definitions that are used in the provisions in Sections 8 and 9. Mr. Patterson explained that Section 8 would amend the Planned Community Act to address issues of concern relating to declarants' control.

Co-Chair Weiss explained that Ms. McGinnis had already discussed effective dates which are covered in Section 10. Co-Chair Weiss asked if there were any questions or comments. She stated that staff had informed the Chairs that members had asked for certain issues to be analyzed further and therefore added declarant control and disclosure. She stated that the declarant control issue is parallel to the Condominium Law and the disclosure for some of the options that were presented to the committee. Co-Chair Weiss stated that in the past when changes have been made to the Homeowners Associations law, parallel changes are usually made to the Condominium law and this bill just refers to the Homeowners Association law, but if it is the will of the committee, staff can be asked to make comparable adjustments to the Condominium Act; the committee would need direction on this action.

Co-Chair McGee stated that it had been discussed with staff about setting up an agency to receive all complaints and it had been suggested that the Attorney General's office or the Real Estate Commission could be the agency. He stated that the committee has not decided on which to approach to take so the committee wants to draft language to provide a repository to receive complaints so they can be compiled, easy to locate and easy to review. Co-Chair McGee asked that staff provide legislation to provide for this provision.

Co-Chair Weiss stated that the committee, if it is their will, needs to decide which agency should receive the complaints and ideally, add it to the proposed legislation. She stated that the particular agency would not be empowered to get involved in mediating the disputes at this point. She also stated that the concern is that the Attorney General's office usually tells people with complaints, that they do not handle those complaints, and therefore complaints were not lodged there. She stated that the committee felt it was important for folks to have a place to make a complaint and to have a governmental agency retain their complaints so if in the future further changes were needed in the law, there would be access to the complaints to consider for changes to the law.

Co-Chair Weiss recognized Representative Earle. She asked if either agency had expressed any willingness or interest in taking on the complaints. Co-Chair Weiss stated that the committee had heard from both agencies about their perspectives at the first meetings of the study commission, but had not recently asked them to do this specifically.

Co-Chair Weiss recognized Representative Cleveland. He stated that he voted for the Attorney General's office.

Co-Chair Weiss stated that if it is the will of the committee, the Attorney General's office can be designated in the legislation as the agency to receive complaints and have more discussions with them as the bill unfolds. She stated that she thought it would be good in order for the bill to move forward, to keep the bill as lean as possible in terms of cost and to have a place where people can send in their complaints and have them filed. Co-Chair Weiss asked if the committee wanted to go with Representative Cleveland's suggestion to have staff include language to include the Attorney General's office as the repository of complaints. The committee members were in agreement and Co-Chair Weiss stated that a vote was not necessary for the suggestion, but that the bill would be voted on.

Co-Chair Weiss recognized Representative Cleveland. Representative Cleveland stated that it had been mentioned that changes would be made to the Condominium Act and he recommended that they, the new legislation and the Condominium Act, be parallel to one another. Co-Chair Weiss stated that the parts of the Condominium Act, regarding declarant control, would be going into the new legislation. Co-Chair Weiss asked if it was the will of the committee to make the legislation parallel. The committee was in agreement and Co-Chair Weiss asked that staff make the legislation parallel.

Co-Chair Weiss recognized Representative Cleveland. He asked if the new legislation would address holding individual board members responsible for criminal acts. Co-Chair Weiss recognized Ms. McGinnis, who stated that under current law of the General Statutes, Chapter 55, there are standards for non-profit board of directors' conduct. Public member Heagarty spoke of derivative suits and Co-Chair Weiss stated that if board members commit a crime that there is law enforcement that can get involved and there is also a standard that can be applied that Ms. McGinnis mentioned, but an attorney would need to be hired to address the issue. Co-Chair Weiss stated that over the last several months the committee had expressed that there was no desire at this point to have a state agency be in charge of enforcing the rules; one of the reasons that the committee was keeping track of complaints is to see if in the future there is a need for an agency to enforce the rules. She additionally explained that the draft legislation would require that people would still need to hire a lawyer or take measures to call a meeting to get enough homeowners together to vote out the existing leadership.

Representative Cleveland was recognized and stated that at times, homeowners associations may ignore the request by the homeowners for a special meeting to discuss issues. Ms. McGinnis stated that the draft legislation addresses the issue of calling a special meeting on page 2, lines 34-37. (See Attachment 5)

Co-Chair Weiss asked Ms. McGinnis to explain the applicability of the effective date to existing associations. Ms. McGinnis stated that effective date would apply to existing associations as long as the declaration was not contrary to the provisions and would only apply to events on or after the effective date.

Co-Chair Weiss stated that if there are gross abuses occurring, homeowners will need to demand that the documents be amended to give them more rights. She also stated that there are significant protections in the drafted legislation, but it can only reach so far back. Co-Chair Weiss recognized Co-Chair McGee who stated that the committee discussed this issue and if one goes to court, a judge may demand that the loser pay fees for the winner. He stated that maybe the language should be changed to "shall" pay, instead of "may' pay; that it is left up to the judge's discretion.

Co-Chair Weiss recognized public member Heagarty. He spoke of the cost of litigation to the homeowner and suggested that the committee may want to consider this in the future. He stated that corporations, when the shareholder has evidence or grievance against a board member, can be sued under the shareholder's derivative suit, and the board is forced to pay for the investigation and the costs of that select process. This could be a model for homeowners associations.

Co-Chair Weiss recognized Representative Cleveland who stated that he felt that board members should be held personally liable for violations of the law. Co-Chair Weiss stated that the committee has been working with staff to try to incorporate a lot of consumer protections into the legislation, knowing that there are a lot of homeowners associations doing a fine job and that there are some that are not. Co-Chair Weiss also stated that it should be kept in mind that as North Carolina grows, there will be more and more developments which will be governed by homeowners associations so there will be a lot of new protections in those developments prospectively and as this body of law is developed, the courts will recognize abuses.

Co-Chair Weiss recognized Co-Chair McGee who stated that the title is not so long as it can not be amended so the committee can add amendments. He referred to Section 3 that refers to annual meetings and the subsection that refers to declarant control. (See Attachment 5.) He stated that it does not mention how often the board has to meet after declarant control and that he believes there is no meeting time established in the new legislation. Ms. McGinnis confirmed this; only an annual meeting is required. Co-Chair McGee stated that he also noted that if the association had to give an installment payment schedule, what type would it be? He requested that the committee pursue more specificity on the installment plan issue. Ms. McGinnis stated that the language could be changed to reflect desired changes. Co-Chair Weiss asked Co-Chair McGee if he had any suggestions about the installment issue. Co-Chair McGee stated the he would suggest equal installments and further explored what would be included in the installment

payment schedule; would it be just the requirement to meet the new assessment or dues? Ms. Cochrane-Brown spoke to Section 4, subsection e2. (See Attachment 5)

Public member Heagarty was recognized. He asked if late fees continued to accrue after the homeowner starts paying installments? Co-Chair McGee referred to Section 4, subsection b1 to answer this question, noting that it is not specific enough. (See Attachment 5) Representative Cleveland stated that he would think that once installments payments began, the late fees would not continue to accrue. Co-Chair Weiss asked if it would be beneficial to have the word "reasonable" in the installment schedule payment plan section to act as a modifier rather than specifying a time period. The committee agreed to have the word "reasonable" added. Co-Chair Weiss reminded the committee that the new legislation would continue to be examined so it is a work in process.

Representative Cleveland referred to page 6, lines 42-43. (See Attachment 5) He questioned why executive sessions were excluded? Ms. McGinnis referred to page 3, subsection e. (See Attachment 5) Representative Earle asked if it was normal not to keep minutes during executive sessions. Co-Chair McGee stated that during town councils' executive meetings minutes were kept. Ms. McGinnis stated that the language could be stricken regarding executive sessions.

Mr. Patterson was recognized and spoke to the possibility of exempting public access to executive sessions. Co-Chair Weiss stated that the committee may want to exercise caution about how much to put in the new legislation about specifics of what can be disclosed, but noted the importance of minutes being kept in executive sessions.

Public member Heagarty was recognized and spoke to Section 6, (See Attachment 5) He stated that there was already a program in place that offers mediation regarding foreclosures and perhaps it should be noted in the new legislation that mediation should be allowed in cases involving homeowners associations. Co-Chair Weiss stated that she knew there are other forms of alternative dispute resolution with certified mediators in place and clauses in these types of documents do not specify where the mediation has to occur. Mr. Patterson stated that "certified mediators" could be added to the language of the new legislation.

Co-Chair Weiss recognized Mr. Pete Powell from the Administrative Courts. He explained the use of mediators and stated that "certified" could be put in the language to specify the type of mediator. Public member Heagarty was recognized and stated his concerns about making sure the mediator has some type of certification. Co-Chair Weiss stated that the language of the new legislation could be changed to reflect that mediators need to be certified.

Co-Chair Weiss asked staff to explain the solar issue. (See Attachment 7) Ms. McGinnis was recognized and spoke of the visit to the committee by Mr. Bob Leker. (See Attachment 6)

She stated that subsection c has been struck. (See Attachment 7) She stated that subsection b has been enhanced. (See Attachment 7) Co-Chair Weiss asked the committee if they wanted to include this in the new legislation or have it stand alone. Representative Howard stated that she would suggest letting it stand alone.

Public member Heagarty was recognized and expressed his concerns over the confusion around the visibility standard.

Mr. Jones was recognized and spoke of the empowerment of certain architectural groups in regards to the solar panel issue. He stated that under the current law, neighborhoods are allowed to make the decision around solar panels based on the architectural design of the house and how it looks.

Mr. Ole Madsen was recognized and stated that there is a move towards more green buildings and more renewable energy.

Co-Chair Weiss asked what the committee wanted to do about the solar panel issue. Do they want the solar panel issue rolled into the new legislation, recommend it separately, or can decide not to move it forward? Representative Cleveland stated that he would like it to be a separate issue.

Co-Chair Weiss asked if there was a motion with respect to the draft bill. Representative Howard made a motion to recommend the draft bill as a recommendation from the House Select Committee on Homeowners Associations. Public member Heagarty seconded the motion.

Ms. Karen Cochrane-Brown was recognized to explain the changes that staff have been asked to make. She stated that the first change was to make all of the changes parallel to the condo act. She stated that the second change was to recommend the Attorney General's office to be the repository for complaints, tracking them and reporting back. She stated that the third change was to define installments as equal periodic payments over a reasonable period of time and clarify that late fees stop once installment payments begin. She stated that the fourth change was to keep minutes form the executive session. She stated that the fifth change was to clarify that certified mediators can be used in dispute resolution.

Co-Chair Weiss called the vote and the committee voted unanimously in support of the Howard motion.

Co-Chair Weiss asked the members to review the Draft Report. (See Attachment 8)

Ms. Karen Cochrane-Brown was recognized and explained the Draft report. (See Attachment 8) She stated that it included the summary of the meetings, the options for action from the 10-20-2010 meeting and the draft bill.

Co-Chair Weiss asked if there was a motion to approve the report. Co-Chair McGee made the motion to approve the report and Public member Heagarty seconded it. Co-Chair Weiss asked staff to amend the report to include today's meeting and to add the bill draft after it had been changed.

Co-Chair McGee asked to make a statement. He stated that he wanted to read a comment from a constituent who wrote him a 43 page letter. The constituent wrote...that there were disturbing trends in modern society; including the home which historically was recognized as central to a person's cultural and psychological well being had now become a pawn of lawyers, politicians, developers and the like and the home has now been reduced to four walls and a roof that are hemmed in on every side and that are a cash register for some.

Co-Chair Weiss asked that all of those who wished to adopt the report as amended to reflect the changes made today, to please respond with aye. All members voted for the motion.

Co-Chair Weiss requested a point of personal privilege and thanked everyone for their involvement in helping to move the legislation forward. She also thanked the able staff for their wonderful job. She stated that a lot of work is still needed to move the legislation forward and to ensure consumer protection in the law; and that the committee is open to suggestions as the legislation moves forward as changes may be necessary. She also stated that there are many people presently in very frustrating situations with their homeowners association, but because of interference with contracts issue, cannot be fixed.

Co-Chair McGee thanked everyone.

The meeting adjourned at 4:18 p.m.

Co-Chair Jennifer Weiss

Cindy Douglas, Committee Assistant

ATT #1

HOUSE PAGES

NAME OF COMMITTEE HouseCommerceHousing, Bus. DATE 1/19/11

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: Jaung Bae
2. Name: Bill Bass
3. Name: Bob Rossi
4. Name: _____

ATT #2 ①

VISITOR REGISTRATION SHEET

House Select Comm on Homeowners Ass. — Name of Committee

1/19/11 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Burrows	Carolina Journal
JE Powell	AOC
Bill Rowe	NC Justice Center
David McGowan	NC Realtors
John Bowdish	LML HOA
Jessi Hays	NC HBA
Cady Thomas	NCAR
Janet Thorn	NCREC
Tom Miller	NCREC/AGO

VISITOR REGISTRATION SHEET

House Select Comm - Homeowners Assoc 1/19/11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McTierney	Talis Management Group
JOHN LAWTON	CAI - LAC
Henry Jones	Attorney - Raleigh
Hope Carmichael	Attorney - Raleigh

VISITOR REGISTRATION SHEET

House Select Comm on Homeowner Ins. — Name of Committee

11/19/11 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Mooney	The Insider
Jim Blaylock	Attorney
Dave Boyson	Oyster Harbour
Robert Simonds	Oyster Harbour
Carley Ruff	NC Housing Coalition
Ole Madsen	Oyster Harbor - Brunswick Co.
Lou DeVita	SHA TRAIL SUNSET BEACH
FRANK WIEDMAN	SHATRAIL SUNSET BEACH
Matt Tomsic	Star News Wilmington
Chris Kukla	CCL
PAIGE WORSHAM	Legis. Reporting Service

1-19-11 att #3

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

January 19, 2011

TO: Members of the House Select Committee on Homeowners Associations

FROM: Jennifer L. McGinnis and Karen Cochrane-Brown
Committee Staff

RE: Applicability of Proposed Legislation on Homeowners Associations/Impairment of Contract Issues

Overview of the Contract Clause

Article I, Section 10, of the Constitution of the United States, the "Contract Clause," provides:

"No state shall... pass any... law impairing the obligation of contracts..."

Common law also provides that the government cannot adversely affect substantive rights once such rights have vested.

Courts use a balancing test to determine whether a particular regulation violates the Contract Clause. Three factors are considered when evaluating a claim that the contract clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustment of rights and responsibilities of the contracting parties is based upon reasonable conditions and is of an appropriate nature. Thus, the threshold inquiry when analyzing a contract clause claim is whether the legislation has, in fact, resulted in a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear to withstand constitutional challenge; the more severe the impairment, the more searching the examination of the legislation must be. Minimal alteration of contractual obligations may end the inquiry at its first stage, while, on the other hand, severe impairment will push the inquiry to a careful examination of the nature and purpose of the legislation.
16A C.J.S. (Corpus Juris Secundum) Constitutional Law § 426
[footnotes omitted]

Legislation governing the relationship between planned communities and homeowners may impair existing contractual rights in that these relationships are the subject of private contracts -- homeowners have contractually agreed to abide by certain restrictive

covenants and have conversely relied on the enforcement of these restrictive covenants in choosing their homes. Thus, legislation that would alter such private contractual agreements would necessarily implicate the Contract Clause of the United States Constitution.

Uniform Common Interest Owners Bill of Rights Act/Applicability

The Uniform Common Interest Owners Bill of Rights Act (UCIOBORA or the Act) drafted by the National Conference of Commissioners on Uniform State Laws addresses the issue of applicability to new and existing common interest communities (or "planned communities" as referred to in North Carolina) in Sections 5 and 6 of the Act respectively. Pertinent analysis from the comments to these sections state:

> "Two conflicting policies are posed when considering the applicability of this Act to "old" and "new" common interest communities in the enacting State. On the one hand, it is desirable, for reasons of uniformity, for the Act to apply to all common interest communities located in a particular State, regardless of whether the common interest community was created before or after adoption of the Act in that State. To the extent that different laws apply within the same State to different common interest communities, confusion results in the minds of both lenders and consumers. Moreover, because of the inadequacies and uncertainties of common interest communities created under prior law, if any, and because of the requirements placed on declarants and unit owners' associations by this Act which might increase the costs of new common interest communities, different markets might tend to develop for common interest communities created before and after adoption of the Act.
>
> **On the other hand, to make all provisions of this Act automatically applicable to all aspects of "old" common interest communities might violate the constitutional prohibition of impairment of contracts. In addition, aside from the constitutional issue, automatic applicability of the entire Act almost certainly would unduly alter the legitimate expectations of some present unit owners and declarants.**
>
> Accordingly, the philosophy of this part reflects a desire to maximize the uniform applicability of the Act to all common interest communities in the enacting State, while avoiding the difficulties raised by automatic application of the entire Act to preexisting common interest communities. This Act achieves that balance by, first, selective inclusion of provisions in this Act, and second, making this Act apply only to events and circumstances occurring after the Act's effective date.
>
> ...
>
> The Act adopts a novel three-step approach to common interest communities created before the effective date of the Act. First, all provisions of the Act automatically apply to "old" common interest communities, but only prospectively. Second, the Act applies only in a manner which does not

> invalidate provisions of declarations and bylaws valid under "old" law. Third, under Section 6(b), owners of "old" common interest communities may amend any provisions of their declaration or bylaws, even if the amendment would not be permitted by "old" law, so long as (a) the amendment is adopted in accordance with the procedure required by "old" law and the existing declaration and bylaws, and (b) the substance of the amendment does not violate this Act.

In short, the UCIOBORA drafting committee proposed that the Act be applied to all new common interest communities created in a state after the Act's effective date. With regard to common interest communities created in a state prior to the Act's effective date, the Act would apply to those communities, but only with respect to events and circumstances occurring after the Act's effective date and would not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common interest communities. UCIOBORA would allow declaration, bylaws, or plats and plans of any planned community created before the effective date of the Act to be amended to achieve any result permitted by this Act, regardless of what applicable law provided before the effective date of the Act. Further, UCIOBORA's suggested effective date clause includes language which provides that if an amendment to the Act is adopted after the Act is initially adopted in any state, the same body of law will thereafter apply to all common interest communities created under the Act or subjected to it to avoid perpetuating the retroactivity issue.

On March 31, 2010, the House Select Committee on Homeowners Associations heard a presentation from Mr. Carl H. Lisman, Esq., renowned expert in the area of homeowners' association law and Chair of the Drafting Committee for the Uniform Common Interest Ownership Act. When asked during the course of his presentation whether there would be an impairment of contracts issue with applying provisions retroactively, Mr. Lisman indicated that the drafting committee originally thought not, but there were no court cases, and he could not definitively say there would not be a problem.

North Carolina's Planned Community Act/Applicability Provisions and Case Law

Upon enactment in 1998, the North Carolina Planned Community Act contained applicability provisions closely resembling those recommended by the UCIOBORA drafting committee as described above. The applicability provisions of the PCA as originally enacted were challenged in a relatively recent North Carolina case on the basis that they violated the Contract Clause. In *Reidy v. Whitehart* (185 N.C.App. 76, 648 S.E.2d 265), property owners brought an action against their homeowners' association (HOA) after the HOA imposed a $25 per day fine for the homeowners' violation of a decision by the HOA's architectural committee. The HOA counterclaimed seeking to collect the fines assessed. In short, the plaintiff/homeowners alleged in part that retroactive application (as provided in G.S. 47F-1-102(c)) of the relevant provisions of the PCA regarding an association's power to impose fees violated the Contract Clause, in that the provisions of the PCA substantially changed the contract between the parties. The Court disagreed, stating:

"Any law which enlarges, abridges or changes the intention of the parties as indicated by the provisions of a contract necessarily impairs the contract whether the law professes to apply to obligations of the contract or to regulate the remedy for enforcement of the contract." *Adair v. Orrell's Mut. Burial Assoc.*, 284 N.C. 534, 538, 201 S.E.2d 905, 908, *appeal dismissed,* 417 U.S. 927, 94 S.Ct. 2637, 41 L.Ed.2d 231 (1974). However, in *Tabor v. Ward,* 83 N.C. 291, 294-95 (1880), the North Carolina Supreme Court stated:

> It is well settled by a long current of judicial decisions, state and federal, that the legislature of a state may at any time modify the remedy, even take away a common law remedy altogether, without substituting any in its place, if another efficient remedy remains, without impairing the obligation of the contract.

Here, the provision of the Act does not disturb a vested right, impair a binding contract or create a new obligation. The provision merely provides an additional remedy for the enforcement of the Declaration. *See Byrd v. Johnson,* 220 N.C. 184, 188, 16 S.E.2d 843, 846 (1941) (" „Statutes directed to the enforcement of contracts, or merely providing an additional remedy, or enlarging or making more *83 efficient an existing remedy, for their enforcement, do not impair the obligation of the contracts." "). In addition, the Act facilitates the intent of the parties by solidifying the importance of the restrictive covenants. *Bateman v. Sterrett,* 201 N.C. 59, 62, 159 S.E. 14, 16 (1931) ("[A] statute which facilitates the intention of the parties neither impairs the obligation of the contract, nor divests vested rights."). Accordingly, we disagree with plaintiffs.

The Court thus upheld the retroactive application of the PCA as set forth in G.S. 47F-1-102(c) with regard to the fee provisions of the PCA.

1-19-11 ATT#4

Bill Draft 2011-RI-1: Planned Community Act Amends.

2011-2012 General Assembly

Committee:	House Select Committtee on Homeowners Associations	**Date:**	January 19, 2011
Introduced by:		**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	2011-RI-1 [v.11]		

Section 1 - Uniform Common Interest Owners Bill of Rights Act (UCIOBORA) provision (Sec. 8(b) and (c)) on **discretion in enforcement** by HOAs, and setting parameters for required determination.

Sections 2.(a) and 2.(b) -- UCIOBORA provision (Sec. 20) governing required **process for adoption of budgets and imposition of special assessments**.

Section 3 - UCIOBORA provision (Secs. 11 and 12) on **open meetings**.

Section 4 - UCIOBORA provision (Sec. 15) with new **foreclosure limitations**.

Sections 5.(a) and 5.(b) - UCIOBORA provision (Sec. 16) on **record-keeping** . (5 day turnaround included in the Uniform Act has been changed to 15 days per the committee's request).

Section 6 -- UCIOBORA provision (Sec. 21(b)) allowing use of **alternative dispute resolution** for conflicts between homeowners and their HOAs.

Section 7 - definitions added to Chapter for purposes of disclosure and declarant control provisions.

Sections 8.(a) through 8.(e) - **Declarant Control Provisions** modeled after those included in the North Carolina Condominium Act (Chapter 47C of the General Statutes).

Sections 9.(a) and 9.(b) - **Disclosure** of HOA/restrictive covenant information to prospective purchasers.

- Option 1: Revise the Residential Property Disclosure Form to require sellers of property in planned communities to disclose the existence of HOAs and restrictive covenants
- Option 2: Amend the Planned Community Act to require all sellers of property in planned communities to provide prospective purchasers with a copy of the declaration, covenants, bylaws, and the association rules and regulations.

Section 10 - Effective date/UCIOBORA provision (Secs. 5 and 6) on applicability.

Research Division *O. Walker Reagan, Director* *(919) 733-2578*

1-19-11 ATT # 5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

BILL DRAFT 2011-RI-1 [v.11] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/19/2011 12:01:49 PM

Short Title:	Planned Community Act Amends.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PLANNED COMMUNITY ACT TO ADD OR ENHANCE CONSUMER PROTECTION PROVISIONS, INCLUDING PROVISIONS RELATED TO: DISCRETION IN ENFORCEMENT BY HOMEOWNERS ASSOCIATIONS, PROCESSES REQUIRED FOR IMPOSITION OF SPECIAL ASSESSMENTS, OPEN-MEETINGS, RECORD-KEEPING, USE OF ALTERNATIVE DISPUTE RESOLUTION, ADDITIONAL LIMITATIONS ON FORECLOSURE, DECLARANT CONTROL, AND DISCLOSURE OF INFORMATION ABOUT HOMEOWNERS ASSOCIATION TO POTENTIAL PURCHASERS.

The General Assembly of North Carolina enacts:

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

"**§ 47F-3-102.1 Enforcement determinations; factors.**

(a) An executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, or rules and regulations of the association, including whether to compromise any claim for unpaid assessments or other claim made by or against it. An executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented one of the following factors exists:

(1) The association's legal position does not justify taking any or further enforcement action.

(2) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law.

(3) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources.

(4) It is not in the association's best interests to pursue an enforcement action.

(b) An executive board's determination not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action."

SECTION 2.(a) G.S. 47F-3-103(c) is repealed.

SECTION 2.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-107.2. Adoption of budgets; special assessments.**

(a) The executive board, at least annually, shall adopt a proposed budget for the planned community for consideration by the lot owners. Not later than 30 days after adoption of a proposed budget, the executive board shall provide to all the lot owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the lot owners to consider ratification of the budget. Unless at that meeting a majority of all lot owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the lot owners continues until the lot owners ratify a subsequent budget.

(b) The executive board, at any time, may propose a special assessment. Except as otherwise provided in subsection (c), the assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) and the lot owners do not reject the proposed assessment.

(c) If the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency, the special assessment shall become effective immediately in accordance with the terms of the vote. The executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote. Notice of the emergency assessment must be provided promptly to all lot owners."

SECTION 3. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) An association shall hold a meeting of lot owners annually at a time, date, and place stated in or fixed in accordance with the bylaws. ~~A meeting of the association shall be held at least once each year.~~ Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. If the association does not notify lot owners of a special meeting within 30 days after the requisite number or percentage of lot owners request the secretary to do so, the requesting members may directly notify all the lot owners of the meeting. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer. Only matters described in a meeting notice may be considered at a special meeting.

~~(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.~~

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless the declaration or bylaws otherwise provide, meetings of the

association and the executive board may be conducted by telephonic, video, or other conferencing process if both of the following conditions are met:

(1) The meeting notice states the conferencing process to be used and provides information explaining how lot owners may participate in the conference directly or by meeting at a central location or conference connection.

(2) The process provides all lot owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d) of this section.

(d) Lot owners must be given a reasonable opportunity at any meeting, including meetings of the executive board, to comment regarding any matter affecting the planned community or the association.

(e) Meetings of the executive board and committees of the association authorized to act for the association must be open to the lot owners except during executive sessions. The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only for the following purposes:

(1) To consult with the association's attorney concerning legal matters.

(2) To discuss existing or potential litigation or mediation, arbitration, or administrative proceedings.

(3) To discuss labor or personnel matters.

(4) To discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(5) To prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

(f) For purposes of this section, a gathering of board members at which the board members do not conduct association business is not a meeting of the executive board. The executive board and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

(g) During the period of declarant control, the executive board shall meet at least four times a year. At least one of those meetings must be held at the planned community or at a place convenient to the community. After termination of the period of declarant control, all executive board meetings must be at the planned community or at a place convenient to the community unless the lot owners amend the bylaws to vary the location of those meetings.

(h) Unless the meeting is included in a schedule given to the lot owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each executive board meeting to each board member and to the lot owners. The notice must be given not less than 10 days nor more than 60 days before the meeting and must state the time, date, place, and agenda of the meeting.

(i) If any materials are distributed to the executive board before the meeting, the executive board at the same time shall make copies of those materials reasonably available to lot owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(j) Unless the declaration or bylaws otherwise provide, the executive board may meet by telephonic, video, or other conferencing process if both of the following conditions are met:

(1) The meeting notice states the conferencing process to be used and provides information explaining how lot owners may participate in the conference directly or by meeting at a central location or conference connection.

(2) The process provides all lot owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d).

(k) After termination of any period when the declarant controls the association, lot owners may amend the bylaws to vary the procedures for meetings described in subsection (j).

(l) Instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all lot owners of any action taken by unanimous consent. After termination of the period of declarant control, the executive board may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the executive board.

(m) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than 60 days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to lot owners, whichever is later."

SECTION 4. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of ~~30~~ 90 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due and an offer to accept payments in installments by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the ~~association~~ association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate ~~under power of sale~~ under Article 2A of Chapter 45 of the General ~~Statutes.~~ Statutes, if the assessment remains unpaid for 90 days or more and the lot owner has failed to accept or comply with the proposed installment schedule. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and

charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(b1) An association shall apply any payments made by the lot owner in the following priority:

(1) Unpaid assessments.
(2) Late charges associated with the assessment.
(3) Attorneys' fees and other collection charges.
(4) Fees, fines, interest, and associated late fees.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The ~~association, acting through its executive board and in the board's sole discretion, may agree to~~ association shall allow payment of an outstanding balance in installments. ~~Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule.~~ The association shall mail a statement of the assessment amount due and an offer to accept payments under a proposed installment schedule in accordance with subsection (a) of this section. If the lot owner accepts the proposed installment schedule and subsequently fails to comply with the terms of the schedule, the association may file a claim of lien in accordance with subsection (a) of this section when a scheduled payment remains unpaid for 30 days or longer. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and

included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 5.(a) G.S. 47F-3-118 reads as rewritten:

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

(a) ~~The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities.~~ The association must retain the following:

(1) Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records.

(2) Minutes of all meetings of its lot owners and executive board other than executive sessions, a record of all actions taken by the lot owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association.

(3) The names of lot owners in a form that permits preparation of a list of the names of all lot owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast.

(4) Its original or amended organizational documents, bylaws and all amendments to them, and all rules currently in effect.
(5) All financial statements and tax returns of the association for the past three years.
(6) A list of the names and addresses of its current executive board members and officers.
(7) Its most recent annual income and expense statement and balance sheet as required by subsection (a1) of this section.
(8) Financial and other records sufficiently detailed to enable the association to comply with other requirements of law.
(9) Copies of current contracts to which it is a party.
(10) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from lot owners.
(11) Ballots, proxies, and other records related to voting by lot owners for one year after the election, action, or vote to which they relate.

(a1) In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

~~(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board.~~

(d) Subject to subsections (e) and (f) of this section, all records retained by an association must be available for examination and copying by a lot owner or the owner's authorized agent as follows:
(1) During reasonable business hours or at a mutually convenient time and location.
(2) Upon 15 days notice in a record reasonably identifying the specific records of the association requested.

(e) Records retained by an association may be withheld from inspection and copying to the extent that they concern one of the following matters:
(1) Personnel, salary, and medical records relating to specific individuals.
(2) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated.
(3) Existing or potential litigation or mediation, arbitration, or administrative proceedings.

(4) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules and regulations.

(5) Communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work- product doctrine.

(6) Information the disclosure of which would violate law other than this [act];

(7) Records of an executive session of the executive board.

(8) Individual lot files other than those of the requesting owner.

(f) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the lot owner's inspection.

(g) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the lot owner.

(h) An association is not obligated to compile or synthesize information.

(i) Information provided pursuant to this section may not be used for commercial purposes."

SECTION 5.(b) G.S. 47F-3-103 is amended by adding a new subsection to read:

"(g) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

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

"**§ 47F-3-120.1 Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter, an association's declaration, bylaws, or rules and regulations, may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

SECTION 7. G.S. 47F-1-103 is amended by adding two new subdivisions to read:

"**§ 47F-1-103. Definitions.**

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Chapter:

(1) ~~Reserved.~~"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent (20%) of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests

in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

...

(14) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a lot, but the term does not include the transfer or release of a security interest."

SECTION 8.(a) G.S. 47F-3-103(d) reads as rewritten:

"**§ 47F-3-103. Executive board members and officers.**

...

(d) ~~The~~ Subject to subsection (d1), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 120 days after conveyance of seventy-five percent (75%) of the lots (including lots which may be created pursuant to special declarant rights) to lot owners other than a declarant; (ii) two years after all declarants have ceased to offer lots for sale in the ordinary course of business; or (iii) two years after any development right to add new lots was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective."

SECTION 8.(b) G.S. 47F-3-103 is amended by adding a new subsection to read:

"(d1) Not later than 60 days after conveyance of twenty-five percent (25%) of the lots (including lots which may be created pursuant to special rights) to lot owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by lot owners other than a declarant. Not later than 60 days after conveyance of fifty percent (50%) of the lots (including lots which may be created pursuant to special declarant rights) to lot owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by lot owners other than the declarant."

SECTION 8.(c) G.S. 47F-3-104 reads as rewritten:

"**§ 47F-3-104. Transfer of special declarant rights.**

~~Except for transfer of declarant rights pursuant to foreclosure, no~~(a) No special declarant right (G.S. 47F-1-103(28)) may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer, including, but not limited to, liability or obligations relating to warranties. Lack of privity does not deprive any lot owner of standing to bring an action to enforce any obligation of the transferor.

(2) If the successor to any special declarant right is an affiliate of a declarant (G.S. 47F-1-103), the transferor is jointly and severally liable with the

successor for any obligation or liability of the successor which relates to the planned community.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure or a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any lots owned by a declarant, or real estate in a lot subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon the person's request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceeding, of all lots and other real estate in the planned community owned by a declarant the declarant ceases to have any special declarant rights.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor related to the planned community.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) who is not an affiliate of a declarant, is subject to all obligations and liabilities:

a. On a declarant which relate to the declarant's exercise or nonexercise of special declarant right; or

b. On the declarant's transferor, other than:

(i) Misrepresentation by any prior declarant;

(ii) Warranty obligations on improvements made by any previous declarant, or made before the planned community was created;

(iii) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the executive board; or

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to lots under subsection (c), may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any lot owned by the successor, or until recording

an instrument permitting exercise of all those rights other than the right held by the transferor to control the executive board in accordance with the provisions of G.S. 47F-3- 103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under G.S. 47F-3-103(d)."

SECTION 8.(d) G.S. 47F-3-105 reads as rewritten:

"**§ 47F-3-105. Termination of contracts and leases of declarant.**

If entered into before the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office, ~~any contract or lease affecting or related to the planned community~~(1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or leases between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the lot owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office upon not less than 90 days' notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the association before the executive board elected by the lot owners takes office. Failure of the contract to contain such a provision shall not effect the rights of the association under this section."

SECTION 8.(e) G.S. 47F-3-111 reads as rewritten:

"**§ 47F-3-111. Tort and contract liability.**

(a) Neither the association nor any lot owner except the declarant is liable for that declarant's torts in connection with any part of the planned community which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association shall be brought against the association and not against a lot owner.

(c) If an action is brought against the association for a wrong which occurred during any period of declarant control, and if the association gives the declarant who then controlled the association reasonable notice of and an opportunity to defend against the action, such declarant is liable to the association:

(1) for all tort losses not covered by insurance carried by the association suffered by the association or that lot owner, and

(2) for all losses which the association would not have incurred but for a breach of contract. Nothing in this subsection shall be construed to impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

~~(c)~~(d) In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A lot owner is not precluded from bringing an action contemplated by this section because the person is a lot owner or a member of the association."

SECTION 9.(a) G.S. 47F-3-102(13) reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

...

(13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration, certificates required by G.S. 47F-4-103(b), or statements of unpaid assessments;"

SECTION 9.(b) Chapter 47F of the General Statutes is amended to add a new Article to read:

"ARTICLE 4

"Disclosures to Purchasers.

"**G.S. 47F-4-101. Applicability, waiver.**

(a) This Article applies to the disposition of all lots that are part of a planned community subject to this Chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of lots in a planned community in which all lots are restricted to non-residential use.

(b) No disclosure certificate as provided for in G.S. 47F-4-103 need be prepared or delivered in the case of:

(1) a gratuitous disposition of a unit;
(2) a disposition pursuant to court order;
(3) a disposition by a government or governmental agency;
(4) a disposition by foreclosure or deed in lieu of foreclosure;
(5) a disposition to a dealer;
(6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty;
(7) a disposition of property restricted to nonresidential purposes.

"**§ G.S. 47F-4-102. Purchaser's Right to Cancel**"

(a) A person required to deliver a disclosure certificate pursuant to G.S. 47F-4-103(a) shall provide a purchaser with a copy of the certificate before conveyance of the lot, and not later than the date of any contract of sale. Unless a purchaser is given the disclosure certificate more than 5 days before execution of a contract for the purchase of the lot, 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.

(b) A purchaser who elects to cancel a contract pursuant to subsection (a) may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to the offeror's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

"**§ G.S. 47F-4- 103. Disclosures to be made to purchasers.**

(a) Unless exempt under G.S. 47F-4-101(b), a seller of lot that is part of a planned community shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of the lot, 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 lot 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 owner who is selling the lot;
(3) a statement of any other fees payable by the owner who is selling the lot;
(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 lot owners;

(10) a statement as to whether the executive board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the lot 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 written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the lot, the limited common elements assigned thereto, or any other portion of the planned community which has not been cured;

(12) a statement of the remaining term of any leasehold estate affecting the planned 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 lot owner upon sale, condemnation, casualty loss to the lot or the planned community, or termination of the planned community;

(14) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the lot 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 lot to be conveyed of any restrictions on the owner's right to use or occupy the lot or to lease the lot to another person.

(b) The association, within 10 days after a request by a lot owner, shall furnish a certificate containing the information and copies of all documents necessary to enable the lot owner to comply with this section. A lot 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. A lot owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner."

SECTION 9.(c) The North Carolina Real Estate Commission shall revise the Residential Property Disclosure Statement developed by it pursuant to G.S. 47E-4 to provide a place for disclosure by sellers of the existence of any homeowners association with responsibility for enforcing rules and regulations relating to the real property and the existence of any restrictive covenants affecting the real property, regardless of whether such restrictive covenants are currently violated by any condition of the real property.

SECTION 10. This act is effective when it becomes law, and applies to all: (1) planned communities created in this State on or after that date, which contain more than 20 residential lots; and (2) planned communities created in this State before that date, which

contain more than 20 residential lots, except that the act applies only with respect to events and circumstances occurring on after that date and does not invalidate existing provisions of the declaration, bylaws, or plats or plans of those planned communities. The declaration, bylaws, or plats and plans of any planned community created before the effective date of this act may be amended to achieve any result permitted by this act, regardless of what applicable law provided before that date.

1-19-11 ATT#6

NORTH CAROLINA
Department of Commerce

MEMORANDUM

TO: Jennifer McGinnis, House Select Committee on Homeowners Associations
CC: Rita Harris, Ward Lenz, John Morrison, Larry Shirley, Richard Self
FROM: Bob Leker, Program Manager, State Energy Office, NC Department of Commerce
DATE: March 31, 2010
SUBJECT: Background and Options to address issues related to Solar Access Law – Senate Bill 670, Session Law 2007-279

Issue. Issues related to the above reference NC Law that attempts to prohibit ordinances, regulations, covenants, and other restrictions to the placement of solar technology. Identify possible changes to modify legislation giving residents more ability to install solar technology.

Need/Background. A range of new and/or modified government incentives and local programs have increased demand for installing solar technology. Specific examples include:

- A federal tax credit of 30% with no capped maximum for solar water heating or solar electric systems
- A state tax credit of 35% for renewable technologies including solar (caps depend on technology)
- Senate Bill 3 established a set aside program requiring NC utilities to generate a small portion of their portfolio from solar electric generation. In addition, NC offers property tax reductions for solar equipment.
- Local utilities including Progress Energy, Blue Ridge EMC, Brunswick EMC, Piedmont EMC, South River EMC, and City of High Point Electric offer incentives for solar energy.

Solar water heating systems can commonly supply 60 – 80% of the hot water needs in a home. Solar electric systems can typically supply 25% of homes' electricity needs. A comprehensive listing of the various renewable energy and energy efficiency incentives and policies can be found at the following website http://www.dsireusa.org/incentives/index.cfm?CurrentPageID=1&State=NC&RE=1&EE=1 It should also be noted that there is significant interest from the commercial sector and new businesses are being established to sell, install, and service solar energy system. NC is now ranked 12th in the nation in solar installations as listed in the DOE Energy Information Administration website.

Session Law 2007-279 Concerns. This solar access legislation was intended to prevent HOAs and local governments from prohibiting solar installations. However sections of the legislation allow HOAs (as well as local governments) to prohibit solar energy systems if they are visible. Specifically, Article 3 of the legislation allows solar restrictions in deeds if the solar energy system is visible from a roof slope, from a facade, or from the side of a property facing a public access way. Because of these provisions regarding visibility from a public access, it is conceivable that most solar installations could very easily be prohibited. (It is interesting to note that I have not heard any instances of problems with siting solar energy systems from the perspective of a local government). In many cases solar energy systems look similar to skylights and integrate well with roof areas. Another point of concern is that

the current NC solar access law does not affect any restrictions that may have been enacted prior to July 2007 when the first version was passed. The 2007 legislation can be found at http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/HTML/S670v5.html

Possible Solutions. One recommendation is to remove the visibility clause that the current NC uses that allows HOAs to restrict or refuse installation of solar collector systems. Other points that have been suggested or that are contained in existing solar access legislation from other states include: making the solar access law effective back to a certain date so more people are covered; limiting HOAs ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; and limiting required modifications (for aesthetics) that reduce the operating efficiency of the system. Additional information about solar access laws around the country can be found at the following website. http://www.dsireusa.org/solar/solarpolicyguide/?id=19

The following are excerpts of solar access legislation from states that have addressed solar access with success.

Hawaiii

§196-7 Placement of solar energy devices.

(a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void and unenforceable.

(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices. The rules shall facilitate the placement of solar energy devices and shall not unduly or unreasonably restrict that placement so as to render the device more than twenty-five per cent less efficient or to increase the cost of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees for the placement of any solar energy device.

http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0196/HRS_0196-0007.htm

Nevada

NRS 111.239 Prohibition or restriction on use of system for obtaining solar energy on property.

1. Any covenant, restriction or condition contained in a deed, contract or other legal instrument which affects the transfer or sale of, or any other interest in, real property and which prohibits or unreasonably restricts or has the effect of prohibiting or unreasonably restricting the owner of the property from using a system for obtaining solar energy on his or her property is void and unenforceable.

2. For the purposes of this section, the following shall be deemed to be unreasonable restrictions:

(a) The placing of a restriction or requirement on the use of a system for obtaining solar energy which decreases the efficiency or performance of the system by more than 10 percent of the amount that was originally specified for the system, as determined by the Director of the

Office of Energy, and which does not allow for the use of an alternative system at a substantially comparable cost and with substantially comparable efficiency and performance.

(b) The prohibition of a system for obtaining solar energy that uses components painted with black solar glazing.

http://www.leg.state.nv.us/NRS/NRS-111.html#NRS111Sec239

Arizona

33-1816. Solar energy devices; reasonable restrictions; fees and costs

A. Notwithstanding any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device as defined in section 44-1761.

B. An association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device.

http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/33/01816.htm&Title=33&DocType=ARS

In addition, a guide has been published entitled "A Comprehensive Review of Solar Access Law in the United States (Oct 2008)". This complete guide can be found at http://www.solarabcs.org/solaraccess/ The review has a nice discussion of various approaches to solar access and does include a model state level statute encouraging solar access. Below is an excerpt from the model ordinance section on Solar Rights. There is another section that deals with Solar Easements (rules that provide for a property to maintain access to sunlight).

Section 3. Solar Rights

(Massachusetts model, others to consider: Hawaii and Wisconsin)

Solar energy systems; installation or use; restrictive provisions. Any provision in an instrument relative to the ownership or use of real property which purports to forbid or unreasonably restrict the installation or use of a solar energy system or the building of structures that facilitate the collection of solar energy shall be void. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors' installation or maintenance costs by an amount which is estimated to be greater than 10 percent of the total cost of the initial installation of the solar collectors, including the costs of labor and equipment. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with such rules inhibits the solar collectors from functioning at their intended maximum efficiency. The [Agency] shall enforce the provisions of this law in accordance with the authority granted under [section x].

Research note: Staff at the NC Solar Center that work on the DSIRE program (database of state incentives for renewables and efficiency) including Brian Lips – maintain an excellent reference website useful for understanding and researching various incentives at the state, federal, and local level.

1-19-11 ATT #7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-RI-3 [v.1] (01/18)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/18/2011 9:21:24 PM

Short Title: Clarify residential solar collectors prov'ns. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CURRENT LIMITATIONS ON CITY ORDINANCES AND COUNTY ORDINANCES THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR RESIDENTIAL PROPERTY AND THE CURRENT LIMITATIONS ON DEED RESTRICTIONS THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR RESIDENTIAL PROPERTY.

.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-201 reads as rewritten:

"**§ 160A-201. Limitations on regulating solar collectors.**

(a) Except as provided in subsection ~~(c)~~ (b) of this section, no city ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission by a city to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not ~~have the effect of preventing the reasonable~~ unreasonably restrict installation or use of a solar collector for a residential property. For the purposes of this section, a restriction that renders the device more than twenty-five percent (25%) less efficient or increases the cost of the device by more than fifteen percent (15%) of the amount that was originally specified for the system, shall be deemed to be unreasonable.

~~(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:~~

~~(1) On the facade of a structure that faces areas open to common or public access;~~

~~(2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or~~

~~(3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.~~

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 2. G.S. 153A-144 reads as rewritten:

"**§ 153A-144. Limitations on regulating solar collectors.**

(a) Except as provided in subsection ~~(c)~~ (b) of this section, no county ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. No person shall be denied permission by a county to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not ~~have the effect of preventing the reasonable~~unreasonably restrict installation or use of a solar collector for a residential property. For the purposes of this section, a restriction that renders the device more than twenty-five percent (25%) less efficient or increases the cost of the device by more than fifteen percent (15%) of the amount that was originally specified for the system, shall be deemed to be unreasonable.

~~(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:~~

~~(1) On the facade of a structure that faces areas open to common or public access;~~

~~(2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or~~

~~(3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.~~

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 3. G.S. 22B-20 reads as rewritten:

"**§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

(a) The intent of the General Assembly is to protect the public health, safety, and welfare by encouraging the development and use of solar resources and by prohibiting deed restrictions, covenants, and other similar agreements that could have the ultimate effect of driving the costs of owning and maintaining a residence beyond the financial means of most owners.

(b) Except as provided in subsection ~~(d)~~(c) of this section, any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property on land subject to the deed restriction, covenant, or agreement is void and unenforceable. As used in this section, the term "residential property" means property where the predominant use is for residential purposes. The term "residential property" does not include any condominium created under Chapter 47A or 47C of the General Statutes located in a multi-story building containing units having horizontal boundaries described in the declaration. As used in this section, the term

"declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103, depending on the chapter of the General Statutes under which the condominium was created.

(c) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would regulate the location or screening of solar collectors as described in subsection (b) of this section, provided the deed restriction, covenant, or similar binding agreement does not unreasonably restrict installation or use of a solar collector for a residential property. For the purposes of this section, a restriction that renders the device more than twenty-five percent (25%) less efficient or increases the cost of the device by more than fifteen percent (15%) of the amount that was originally specified for the system, shall be deemed to be unreasonable.~~have the effect of preventing the reasonable use of a solar collector for a residential property.~~ If an owners' association is responsible for exterior maintenance of a structure containing individual residences, a deed restriction, covenant, or similar binding agreement that runs with the land may provide that (i) the title owner of the residence shall be responsible for all damages caused by the installation, existence, or removal of solar collectors; (ii) the title owner of the residence shall hold harmless and indemnify the owners' association for any damages caused by the installation, existence, or removal of solar collectors; and (iii) the owners' association shall not be responsible for maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a written agreement that is recorded in the office of the register of deeds in the county or counties in which the property is situated. As used in this section, "owners' association" has the same meaning as in G.S. 47F-1-103.

~~(d) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit the location of solar collectors as described in subsection (b) of this section that are visible by a person on the ground:~~

~~(1) On the facade of a structure that faces areas open to common or public access;~~

~~(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or~~

~~(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.~~

(e) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 4. This act becomes effective October 1, 2011.

1-19-11 ATT # 8

HOUSE SELECT COMMITTEE on HOMEOWNERS ASSOCIATIONS

DRAFT

REPORT TO THE
2011 SESSION OF THE
GENERAL ASSEMBLY
OF NORTH CAROLINA

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January 19, 2011

TO THE MEMBERS OF THE 2010 GENERAL ASSEMBLY

The House Select Committee on Homeowners Associations herewith submits to you for your consideration its report pursuant to G.S. 120-19.6(al) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Respectfully submitted,

Representative William C. McGee

Representative Jennifer Weiss

Co-Chairs
House Select Committee on Homeowners Associations

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2010

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HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee on Homeowners Associations (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of the 7 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. Vacancies of the Committee are filled by the Speaker of the House of Representatives, and the Speaker may dissolve the Committee at any time.

Representative Weiss	Co-Chair
Representative McGee	Co-Chair
Representative Cleveland	
Representative Earle	
Representative Heagarty	
Representative Howard	
Representative Wray	

Section 3. The Committee may study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. The Committee may also study any other relevant issue that it deems appropriate.

Section 4. The Committee shall meet upon the call of its Co-Chairs. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of $5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Co-Chairs of the Committee. Individual expenses in excess of $5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 17th day of November, 2009.

Joe Hackney,
Speaker of the House of Representatives

SUMMARY of EVENTS

The House Select Committee on Homeowners Associations was established by the Speaker of the House of Representative pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representative of the 2009 General Assembly. The Committee consists of the following seven members: Rep. Jennifer Weiss (Co-Chair), Rep. Bill McGee (Co-Chair), Rep. George Cleveland, Rep. Beverly Earle, Rep. Chris Heagarty, Rep. Julia Howard, and Rep. Michael Wray.

The charge of the Committee is to study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. The Committee may also study any other relevant issue that it deems appropriate. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, and shall submit a final report to the members of the House of Representatives on or before February 1, 2011.

The Committee met five times between the adjournment of the 2009 Regular Session and the start of 2010 Regular Session. The Committee also held a public hearing on February 2, 2010. The Committee held three additional meeting after the short session.

COMMITTEE PROCEEDINGS

January 13, 2010 Meeting

At the initial meeting of the Committee, staff read the Charge to the Committee and gave an overview of the current law regarding the North Carolina's Condominium Act and Planned Community Act. Recent changes to these Acts were also discussed. Legislation enacted by the General Assembly in 2005 was geared toward providing additional safeguards and protections for homeowners. These changes included the following:

- Limiting the use of foreclosure by power of sale if the debt securing the lien on a homeowner's lot consisted solely of fines imposed by the homeowners association (HOA).
- Limiting the payment of attorneys' fees and court when there is an overdue assessment on a homeowner's property.
- Expanding the duties of the HOA to make available to the homeowners the HOA's books and records.
- Restricting the ability of covenants to regulate the display of a U.S. or North Carolina flags and the display of political signs.

In 2009, the following legislation was enacted:

- Added language to insure that homeowners receive notice of a filing of the claim of lien prior to institution of foreclosure proceedings.
- Clarified that any new restrictive covenants, created on or after December 1, 2009, would be invalidated if these covenants would prohibit the installation of solar

collector devices in planned communities and condominium communities. Legislation limiting the regulation of solar collectors was enacted in 2007.

The Committee then discussed future meeting dates.

February 2, 2010 Public Hearing

The Committee heard from approximately 35 speakers. The comments ranged from providing more disclosure for homeowners, alleviating problems with abuse of power by board members when enforcing restrictive covenants, limiting foreclosure on delinquent assessments, and maintaining current foreclosure law.

February 16, 2009 Meeting

The Committee heard from Bob Leker, Renewables Program Manager in the State Energy Office of the North Carolina Department of Commerce. Mr. Leker discussed issues related to the limitations on regulating solar collectors, specifically as it relates to limiting solar collectors on the basis of visibility.

Peter E. Powell, Legal Counsel to the North Carolina Administrative Office of the Courts, presented comments regarding the need for legislation to prevent defects in title, questionable procedures, and abuses and overcharges in HOA lien foreclosures. He emphasized that there are protections for homeowners facing foreclosure of deeds of trusts, but no parallel protections for HOA foreclosures.

Phil Telfer, Special Deputy Attorney General, with the Consumer Protection Division of the North Carolina Department of Justice discussed the HOA complaints handled by the Division. He indicated that there were approximately 38 written complaints in 2009 and that the Division gets approximately 100 calls per year. Most of these calls relate to services offered by HOAs; fees charged, billing practices, and recordkeeping of HOAs; and foreclosures by HOAs. Mr. Telfer indicated that the most benefit that the Division can offer is education prior to purchase of a lot.

March 4, 2010 Meeting

The Committee heard remarks from Mariam Baer, Legal Counsel and Assistant Director, of the Legal Services Division within the North Carolina Real Estate Commission. Ms. Baer, commented on citizen inquiries and complaints to the Commission regarding HOAs, the Commission's jurisdiction in responding to complaints, and the real estate broker's duties with regard to disclosing to consumers the existence of HOAs and restrictive covenants.

Rob Baer, President of the North Carolina Chapter of the Community Associations Institute (CAI) spoke on the role of the CAI to provide the latest information on community association management and governance to volunteer HOA boards. Mr. Baer indicated that the CAI advocated for legislative and regulatory policies that support responsible governance and effective management.

Al, Ripley, Director of the Consumer Action Network at the North Carolina Justice Center, discussed certain minimum protections for homeowners that the Committee should consider.

March 31, 2010 Meeting

The Committee was given an overview of the Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act by Carl, H. Lisman, an attorney and Commissioner with the National Conference of Commissions on Uniform State Laws. Mr. Lisman discussed the Acts and how they compare to North Carolina's Planned Community and Condominium Acts.

Bob Leker, Renewables Program Manager in the State Energy Office of the North Carolina Department of Commerce, was asked to speak again to the Committee regarding concerns about the visibility restrictions on the installation of solar panels. Mr. Leker discussed possible solutions and gave examples of how other states have addressed this issue.

April 14, 2010 Meeting

Committee staff presented a summary of the five previous meetings and offered proposed findings distilled from the meetings. The committee reviewed the seven proposed findings relating to:

- Demographics
- Board Accountability
- Disclosure
- Declarant Transfer Issues
- Consumer Protection
- Foreclosure Issues
- Clarification of the Solar Access Law

The committee voted to adopt the findings and to use them to guide the work of the committee after the short session.

October 20, 2010 Meeting

After a review of the seven findings, the committee heard from several individuals who wanted to relate their experiences with homeowner associations. Donna Staley, retired educator and Chair of the Forsyth County Library Board of Trustees described problems she had relating to board accountability and consumer protection issues. Lou DeVita and Frank Wiedman from Brunswick County addressed the committee on declarant transfer issues. Finally, the committee heard from Lieutenant Commander, United States Navy, Retired, Gerard T. Lew. Lieutenant Commander Lew talked about foreclosure issues.

The Co-chairs then asked staff to present a set of options designed to address each of the findings. The options for Findings 2 and 5 (Board Accountability and Consumer Protection) were combined because of the close relationship between the two issues. Many of the options were derived from the Uniform Common Interest Owners Bill of Rights and which were developed by the Uniform Law Commission.

December 2, 2010 Meeting

The Committee reviewed the options presented at the previous meeting. After discussion, the committee agreed to pursue several of the options. The Co-Chairs offered to present a legislative proposal at a future meeting.

COMMITTEE FINDINGS

FINDING 1: Demographics.

Issues associated with homeowners associations can reasonably be expected to increase rather than decrease as the number of associations operating in the State grows along with population.

With regard to current statistics, there is no mandatory registry of homeowners associations and as such an exhaustive list of associations does not exist. According to Homeowners Associations of North Carolina, however, there are over 17,326 homeowner associations in North Carolina collectively representing over 2,025,000 households or 53% of the owner occupied households in the State. [1]

In recent years, North Carolina's population has grown rapidly. Estimates prepared by the U.S. Census Bureau show that between 2000 and 2005, the State had the ninth-highest growth rate (7.88 percent) among the fifty states and the District of Columbia, reaching a population of 8,683,242. Projections of population growth between 2000 and 2030 prepared by the State demographer indicate that the State total population is expected to reach about 12 million by 2030. The U.S. Census Bureau has projected that North Carolina will become the seventh most populous state by 2030, with more than 12.2 million residents. This move up from the current eleventh place is expected to happen as the State passes New Jersey, Michigan, Ohio, and Georgia in total population.[2]

As robust growth in the State's population continues to occur over the next two decades, corresponding growth in housing construction and the number of homeowners associations is likely to dovetail.

FINDING 2: Board Accountability.

The Committee finds that there is a need to provide homeowners with better recourse when seeking to challenge actions by the Board of Directors.

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[1]See http://www.hoa-nc.com/About.aspx

[2]See http://www.ncmuseumofhistory.org/collateral/articles/S06.recent.population.change.pdf. Data from article entitled "Recent Population Change in North Carolina" by Dr. Alfred W. Stuart from *Tar Heel Junior Historian* 45:2 (spring 2006).

The most common complaint expressed by homeowners both at the public hearing and by correspondence is the lack of an easily accessible and affordable method for homeowners to challenge the actions of the Board of Directors. The Committee received numerous reports from individuals describing flagrant violations of the statute and/or bylaws of the association. These complaints dealt with issues such as failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants. However, the only recourse currently available to homeowners in most cases is to commence a civil action. This option is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense.

Several homeowners suggested that there should be a less costly method of enforcing the statute and resolving disputes with the Board. These suggestions included designating a State agency to enforce the statute, or authorizing mandatory mediation or other methods of alternative dispute resolution.

FINDING 3: Disclosure.

The Committee finds that there is a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property.

Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding by the homeowners at the time they purchased their homes of the existence of restrictive covenants applicable to real property located in planned communities.
It does not appear that present disclosure practices are adequate in notifying prospective purchasers of the nature of the restrictions upon the real property. Sellers of homes in planned communities are in the best position to provide this information to prospective purchasers. G.S. 47E-4 requires that sellers of residential real property furnish to purchasers a residential property disclosure statement, and requires the Real Estate Commission to develop a standard disclosure statement that must include, among other things, "the zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property. The current disclosure statement requires disclosure of "violations of zoning ordinances, restrictive covenants or other land-use restrictions or building codes" but does not require sellers to disclose the existence of restrictive covenants if there are no violations Sellers should be required to disclose the existence of any restrictive covenants affecting the use of the real property, and to furnish a copy of all such restrictive covenants to prospective purchasers The most efficient way to accomplish the needed disclosure appears to be for the Real Estate Commission to amend the disclosure form to include these requirements Such amendment would be within the scope of the present statutory authority granted to the Commission pursuant to G.S. 47E-4. The Committee is informed that the Real Estate Commission is prepared to initiate a rulemaking proceeding for the purpose of implementing revisions to the disclosure statement as recommended by the Committee.

FINDING 4: Declarant Transfer Issues.

The Committee finds that the law should be clarified with regard to the obligations of the declarant.

Unlike the Condominium Act, the Planned Community Act does not limit the time period during which the declarant (developer) may maintain control of the association. Several homeowners related cases of abuses by the declarant including refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems.

FINDING 5: Consumer Protection.

The Committee finds that there is a need for additional consumer protections to better protect homeowners from abusive homeowner association practices.

Several homeowners complained that the law gives homeowners few rights to challenge the actions of the association's Board. The board can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of the association, cause additional improvements to be made as part of the common elements, and impose fees and fines. Homeowner's have complained that these and other actions are often taken without giving notice or an opportunity to vote on such issues to homeowners.

In addition, there have been many complaints about unreasonable actions by the Board, such as arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, and abuse of the foreclosure process.

FINDING 6: Foreclosure Issues.

The Committee finds that although the Planned Community Act authorizes the use of foreclosure proceedings to satisfy homeowner association liens, the foreclosure statute was never intended for this purpose and there are a number of incongruities between the statutes. This issue was raised by the legal counsel to the Administrative Office of the Courts.
In addition, the law authorizes "power of sale foreclosure" to recover unpaid assessments and "judicial foreclosure" to recover unpaid fines and fees. Several individuals suggested that the statute should be amended to prohibit or limit the use of foreclosure in all or some cases.

FINDING 7: Clarification of the Solar Access Law.

The Committee heard from the State Energy Office and a few homeowners that there is some confusion with regard to the law that invalidates any new restrictive covenants which prohibit

the installation of solar collector devices. The law contains an exception if the solar device is visible from a roof slope or façade or if it faces a public access way. Some homeowner associations have apparently used the exception to exclude solar devices altogether.
It was suggested that the law be clarified to limit or remove the visibility exception, as has been done in a number of other states.

OPTIONS FOR COMMITTEE ACTION

Finding 2 – Options for Committee Action - ***Board Accountability.***

Need to provide homeowners with better recourse when seeking to challenge actions by HOA Boards

- Committee received complaints concerning flagrant violations of the applicable statutes and/or HOA bylaws (failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants)
- Only recourse currently available to homeowners in most cases is to commence a civil action, which is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense

Finding 3 – Options for Committee Action - ***Disclosure.***

The committee found a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property.

- Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding of the existence of restrictive covenants at the time they purchased their homes
- G.S. 47E-4 requires sellers of residential real property to furnish purchasers with a residential property disclosure statement, using a form developed by the Real Estate Commission ("REC"), which must include, among other things, "restrictive covenants affecting the real property." The current disclosure statement, however, only requires disclosure of ***violations*** of restrictive covenants

Options to achieve the goal of greater disclosure include:

1. Revising the Residential Property Disclosure Form developed by the REC pursuant to G.S. 47E-4 to require disclosure of HOAs and restrictive covenants;

2. Amending Chapter 47F, the Planned Community Act, to require sellers to provide prospective purchasers with specific information and documents relating to HOAs and the restrictions on the property being sold; and

3. Requiring that sellers provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

Each of these options is discussed more fully below.

Option 1: Revise the Residential Property Disclosure Form to require sellers of property in planned communities to disclose the existence of HOAs and restrictive covenants

The REC is statutorily required to develop the disclosure form that is mandated by G.S. 47E-4. Although the current statute can be read as requiring disclosure of covenants restricting the use of property, the current REC form provides a space only for disclosure of conditions that violate a restrictive covenant. There is no current requirement in the statute that the seller disclose the existence of a homeowners association.

The desired disclosure of the existence of restrictive covenants can be achieved either by: 1) formally requesting the Real Estate Commission to amend the disclosure form; or 2) amending G.S. 47E-4 to require the REC to make this change to the form. Because there is no reference in G.S. 47E-4 to homeowners associations, a statutory amendment would be required to accomplish this disclosure.

In addition to revising the disclosure form, the disclosure requirement would be strengthened by:

- eliminating the option of making "no representation" currently permitted under G.S. 47E-4(a)(2) (only with respect to the new disclosure of HOAs and restrictive covenants)
- amend G.S. 47E-2(9), which currently exempts "the first sale of a dwelling never inhabited" from the disclosure requirements of G.S. 47E-4, to require the new disclosure of HOAs and restrictive covenants in first sales of dwellings never inhabited

Option 2: Amend the Planned Community Act to require all sellers of property in planned communities to provide prospective purchasers with a copy of the declaration, covenants, bylaws, and the association rules and regulations.

This is the approach taken by the Uniform Common Interest Ownership Act ("UCIOA"). Under the UCIOA, the unit owners association is required, upon request by a unit owner, to provide a certificate containing the information needed by the owner to make the required disclosures, and the association is permitted to charge the owner a reasonable fee for the preparation of the certificate. In the case of declarants or dealers, the UCIOA provides that "unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement." UCIOA Section 4-108(a). In the case of resales, "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." UCIOA Section 4-109(c).

Unlike the Planned Community Act, both the UCIOA and the North Carolina Condominium Act mandates full disclosure (including furnishing copies of the declaration, recorded covenants, and association bylaws, rules an regulations) in sales of condo units by a declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser. G.S. 47C-4-102(c). In the case of resales of units, however, the Condominium Act stops short of the UCIOA requirement for disclosure, mandating only that the seller furnish a prospective purchaser with "a statement setting forth the monthly common expense assessment and any other fees payable by unit owners." G.S. 47C-4-109.

Option 3: Require sellers to provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

This objective could be achieved by amending the Planned Community Act to require sellers to provide prospective buyers of lots in planned communities with a brochure to be developed by the REC advising them in simple, understandable terms of basic powers of HOAs, examples of restrictions to which they may be subject, and how to obtain a copy of the governing documents containing the restrictions that apply to the property in question.

Finding 4 - Options for Committee Action - ***Declarant Transfer Issues.***

The committee found that the law should be clarified with regard to the obligations of a declarant (developer).

- Complaints received concerning abuses by a declarant (refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems)
- Unlike the Condominium Act, the Planned Community Act does not limit the time period in which a declarant may maintain control of the association

Options to achieve the goal of clarifying the obligations of a declarant include adding language, which is already in the Condominium Act, to the Planned Community Act:

1. Specifying time limit for declarant control
2. Specifying obligations and liabilities of declarant who transfers declarant interest
3. Allowing homeowner association to terminate contracts and leases entered into by declarant during period of declarant control
4. Providing homeowner association with right of action and remedy against declarant for breach of contract or tort during period of declarant control

Each of these options is discussed more fully below:

Option 1: Add language to the Planned Community Act (PCA) specifying the end of declarant control.

Currently, the Planned Community Act merely states that the declaration may provide for a period of declarant control. (G.S. 47F-3-103(d)). In contrast, the Condominium Act in G.S.

47C-3-103(d) specifies when declarant control must end: "Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of (i) 120 days after the conveyance of 75% of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised."

Option 2: Add language to the Planned Community Act specifying the extent of the obligations and liabilities imposed upon a declarant who transfers his or her declarant interest in a lot or condominium to a third party.

The Condominium Act in G.S. 47C-3-104 sets out the liability of transferor declarant when there is a transfer of any special declarant right.[3] The transferor declarant remains liable for any obligation or liability arising before the transfer. Also if the right is transferred to an affiliate of the declarant, the transferor remains liable.

Option 3: Add language to the PCA allowing the association to terminate certain contracts and leases entered into by the declarant during the period of declarant control

Currently G.S. 47F-3-105 merely allows the termination of contracts and leases entered into before the executive board elected by the lot owners takes office, if the contract or lease is not bona fide or was unconscionable to the lot owners. In contrast, the Condominium Act, in G.S. 47C-3-105, also expands the authority to terminate the following contracts and leases of the declarant: (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, and (2) any other contract or lease between the association and a declarant or an affiliate of a declarant.

Option 4: Add language to the PCA to provide the association or lot owners with a right of action and remedy against the declarant for losses to the plaintiff caused by the declarant's tort or breach of contract during the period of declarant control.

Both the PCA and Condominium Act toll any statute of limitation affecting the association's right of action under this section until the period of declarant control terminates. However, the Condominium Act in G.S. 47C-3-111 (c) and (d) also addresses the declarant's liability during a period of declarant control: If an action is brought against the association for a wrong that occurred during a period of declarant control and the association gives the declarant reasonable notice of, and an opportunity to defend, against the action, the declarant is liable to the association in either tort or contract. Specifically, the declarant is liable to the association for all tort losses suffered that are not covered by insurance carried by the association and all losses

[3] The Planned Community Act and the Condominium Act define "special declarant rights" as rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control. (See G.S. 47C-3-104 and G.S. 47F-1-103)

the association would not have incurred but for a breach of contract.[4] If the declarant is liable to the association it is also responsible for all litigation expenses including reasonable attorneys' fees incurred by the association.

Finding 5 – Options for Committee Action – *Consumer Protection.*

Need for additional consumer protections to better protect homeowners from abusive HOA practices

- Complaints received about unreasonable actions by boards include: arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, abuse of the foreclosure process, and failure of the law to give homeowners enough rights to challenge the actions of HOA Boards
- Boards can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of an association, cause additional improvements to be made as part of the common elements and assess homeowners for those improvements, and such actions are often taken without giving notice or an opportunity to vote to homeowners.

Options to address issues concerning Board Accountability (Finding 2)/ Options to address issues concerning Consumer Protection – (Finding 5), include:

- ***Adopt the Uniform Common Interest Owners Bill of Rights Act. (UCIOBORA).***

  In 2008, the Uniform Law Commission (the "ULC") promulgated a free-standing and relatively short Uniform Act that addresses all of the 'association versus unit owner' issues touched on during the drafting of the 2008 Uniform Common Interest Ownership Act (UCIOA) amendments. The free-standing Act is known as the Uniform Common Interest Owners Bill Of Rights Act or "UCIOBORA". Highlights of the UCIOBORA are:

  Powers and duties of a unit owners association and the executive board are outlined.

  Treatment of association bylaws, rulemaking, operation and governance, notice methods, unit owners and board meetings, and meeting and voting procedures are also provided, as are governing provisions for the adoption of budgets and special assessments.

  UCIOBORA encompasses the authority to discipline unit owners, within limits, for failure to pay assessments, and the executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise on such. The right of an association to proceed in foreclosure on a lien against a unit owner is revised and limited, and the act provides priority for the application of delinquent sums.

[4] However, G.S. 47C-3-111(c) does not impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.

- ***Allow/Require Alternative Dispute Resolution*** -- Authorize or require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding. (see UCIOBORA § 8(a)(3)).

  No similar provisions exist under the Condo Act or the Planned Community Act (PCA).

- ***Add provisions governing board discretion in enforcement.*** UCIOBORA sets forth a list of considerations a board must evaluate in a determination not to take enforcement action in a given situation. UCIOBORA § 8(b) provides:

> (b) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
>
> (1) the association's legal position does not justify taking any or further enforcement action;
>
> (2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;
>
> (3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
>
> (4) it is not in the association's best interests to pursue an enforcement action.
>
> (c) The executive board's decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

No similar provisions exist under the Condo Act or the PCA.

- ***Establish open meeting requirements.*** (UCIOBORA § 12). Among other things, UCOIBORA provides that meetings of HOA boards and committees must be open to unit owners, except during executive sessions (and specifies for what matters executive sessions may be held).

Provisions under the Condo Act (G.S. 47C-3-108) and the PCA (G.S. 47F-3-108) specify that meetings of an association must be held at least once a year and, at regular intervals, an executive board must provide lot owners an opportunity to attend a portion

of an executive board meeting and to speak to the executive board about their issues or concerns.

- ***Enhance record-keeping requirements.*** UCIOBORA § 16 imposes significantly greater record-keeping requirements on HOAs than either the Condo Act (see G.S. 47C-3-118) or the PCA (see G.S. 47F-3-118). In addition to detailed financial records, UCIOBORA requires that minutes of all meetings, an association's organizational documents, as well as rules currently in effect be made available for examination and copying by a unit owner during reasonable business hours or at a mutually convenient time and location; and upon five days' notice.

  The Condo Act and the PCA provide that, at a minimum, the association must keep accurate records of all cash receipts and expenditures and all assets and liabilities, and must make an annual income and expense statement available to all lot owners – these records must be made reasonably available for examination by any lot owner. Further, an association, upon written request, must furnish to a lot owner a statement setting forth the amount of unpaid assessments and other charges against a lot.

- ***Procedures for rules and assessments***: Institute procedures a HOA must follow that prior to: (1) adopting, amending, or repealing any rule; or (2) adopting budgets or special assessment. (UCIOBRA §§ 17, 20).

  No similar provisions exist under the Condo Act or the PCA with regard to rules or imposition of special assessments. Both do, however, specify processes that must be followed concerning adoption of association budgets (see G.S. 47C-3-103(c) and G.S. 47F-3-103(c)).

- ***Installment payments:*** Require an HOA to accept payment of outstanding balances from homeowners in installments

  HOA ***may*** do so under current North Carolina law (see Condo Act (47C-3-1169e2)) and PCA (47F-3-116(e2)).

- ***Punitive Damages:*** Allow imposition of punitive damages for a HOAs willful failure to comply with consumer protection provisions. (see UCIOBORA § 21).

  No similar provisions exist under the Condo Act or the PCA.

- ***Mandatory Registration:*** Create mandatory registry of associations as provided in Article 5 of the Uniform Common Interest Ownership Act.

  No similar provisions exist under the Condo Act or the PCA.

- ***State Oversight Agency:*** Create a new State-level agency or empower an existing one (Real Estate Commission) to register and oversee the activities of homeowner associations. Entity may have enforcement powers as provided in Article 5 of the Uniform Common Interest Ownership Act, or Virginia's Common Interest Community

Board, or may serve only an informational/advisory role as with Virginia's Office of the Common Interest Community Ombudsman.

No State agency in North Carolina currently has responsibility for oversight of homeowner associations.

Finding 6- Options for Committee Action - *Foreclosure Issues.*

Current law authorizes homeowner associations to use power of sale foreclosure to recover unpaid assessments and judicial foreclosure to recover unpaid fines and fees. The committee found that there may be a need to prohibit or limit the use of foreclosure in all or some cases.

Options Concerning Foreclosure Issues:

Currently, under both the Condominium Act (G.S. 47C-3-116) and the Planned Community Act (G.S. 47F-3-116), homeowner associations are authorized to file a claim of lien for any assessment that remains unpaid for a period of 30 days or more. Unless the declaration provides otherwise, fees, charges, late charges, and fines are enforceable as assessments.

If the debt securing the lien is based on fines, interest on fines or attorneys' fees resulting from fines, the association may only enforce the lien by use of judicial foreclosure. Associations may not seek to collect a service, collection, consulting, or administration fee unless the declaration expressly authorizes it and a lien secured by such a fee is also only enforceable by use of judicial foreclosure.

If the debt is for assessments for common expenses, the association may enforce the lien by use of the power of sale foreclosure statute. (Chapter45, Art. 2A) Unlike judicial foreclosure, a power of sale foreclosure proceeding is held before the clerk of court and the clerk must sign a foreclosure order if there is evidence to prove only four factors: (1) a valid debt, (2) default in payment, (3) a legal right to foreclose, and (4) all owners have been served with notice of the hearing. No other issue may be considered in the proceeding. Once the clerk issues the order the property may be sold to satisfy the debt, in the same manner as a mortgage or deed of trust.

The following options to limit an association's authority to use foreclosure to enforce a lien have been recommended in the Uniform Common Interest Owners Bill of Rights Act:

1. The assessment must be at least 3 months past due and the unit owner has failed to accept or comply with a payment plan offered by the association.

   Under current law, the assessment need only be 30 days past due and the law contains a specific provision that neither the association nor the homeowner is obligated to offer or accept any proposed installment plan, although the executive board may agree to allow it.

2. The executive board must vote to commence foreclosure against the specific unit.

   Current law does not specify the process used by the association to commence foreclosure against a specific homeowner.

3. The association must apply any payments made by the homeowner first to unpaid assessments, then to late charges, then to attorneys' fees and other collection charges, and finally to unpaid fees, fines , interest, and late fees.

Current law does not specify how payments must be applied, however, it does require that the association notify the homeowner in writing and by first-class mail that the balance due must be paid within 15 days of the mailing or the homeowner will also be liable for attorneys' fees and court costs. Attorneys' fees in an uncontested case are limited to $1,200, not including costs or expenses.

4. The association may not use foreclosure to enforce a lien resulting from unpaid fines and related sums, unless the association has obtained and perfected a judgment against the homeowner.

Current law provides that a lien resulting from fines and related sums can only be enforced by judicial foreclosure, which would result in a judgment. North Carolina law appears to conform to this limitation.

5. All aspects of the foreclosure must be commercially reasonable.

Chapter 45, the Foreclosure statute, specifies the method for advertising, time, date, place, and terms of foreclosure proceedings and the sale of property.

Finding 7 – Options for Committee Action - ***Solar Access Issues.***

The Committee received complaints from homeowners and heard from staff with the State Energy Office that there is some confusion with regard to the law that invalidates new restrictive covenants as well as city and county ordinances which prohibit installation of solar collector devices. Specifically concern was raised about an exception contained in the law that allows prohibitions on installation if the solar device would be visible from a roof slope or façade or if it faces a public access way. Reportedly this exception has been used by HOAs to exclude solar devices altogether.

Options to address solar access issues (Finding 7), include:

- Remove the "visibility exception"
- Limit the "visibility exception," as other states have done, by:
  - Limiting ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; or
  - limiting required modifications (for aesthetics) that reduce the operating efficiency of the system.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

BILL DRAFT 2011-RI-1 [v.10] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/18/2011 8:37:55 PM

Short Title: Planned Community Act Amends. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PLANNED COMMUNITY ACT TO ADD OR ENHANCE CONSUMER PROTECTION PROVISIONS, INCLUDING PROVISIONS RELATED TO: DISCRETION IN ENFORCEMENT BY HOMEOWNERS ASSOCIATIONS, PROCESSES REQUIRED FOR IMPOSITION OF SPECIAL ASSESSMENTS, OPEN-MEETINGS, RECORD-KEEPING, USE OF ALTERNATIVE DISPUTE RESOLUTION, ADDITIONAL LIMITATIONS ON FORECLOSURE, DECLARANT CONTROL, AND DISCLOSURE OF INFORMATION ABOUT HOMEOWNERS ASSOCIATION TO POTENTIAL PURCHASERS.

The General Assembly of North Carolina enacts:

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

"**§ 47F-3-102.1 Enforcement determinations; factors.**

(a) An executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, or rules and regulations of the association, including whether to compromise any claim for unpaid assessments or other claim made by or against it. An executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented one of the following factors exists:

(1) The association's legal position does not justify taking any or further enforcement action.

(2) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law.

(3) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources.

(4) It is not in the association's best interests to pursue an enforcement action.

(b) An executive board's determination not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action."

SECTION 2.(a) G.S. 47F-3-103(c) is repealed.

SECTION 2.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-107.2. Adoption of budgets; special assessments.**

(a) The executive board, at least annually, shall adopt a proposed budget for the planned community for consideration by the lot owners. Not later than 30 days after adoption of a proposed budget, the executive board shall provide to all the lot owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the lot owners to consider ratification of the budget. Unless at that meeting a majority of all lot owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the lot owners continues until the lot owners ratify a subsequent budget.

(b) The executive board, at any time, may propose a special assessment. Except as otherwise provided in subsection (c), the assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) and the lot owners do not reject the proposed assessment.

(c) If the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency, the special assessment shall become effective immediately in accordance with the terms of the vote. The executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote. Notice of the emergency assessment must be provided promptly to all lot owners. "

SECTION 3. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) An association shall hold a meeting of lot owners annually at a time, date, and place stated in or fixed in accordance with the bylaws. ~~A meeting of the association shall be held at least once each year.~~ Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. If the association does not notify lot owners of a special meeting within 30 days after the requisite number or percentage of lot owners request the secretary to do so, the requesting members may directly notify all the lot owners of the

meeting. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer. Only matters described in a meeting notice may be considered at a special meeting.

~~(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.~~

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless the declaration or bylaws otherwise provide, meetings of the association and the executive board may be conducted by telephonic, video, or other conferencing process if both of the following conditions are met:

(1) The meeting notice states the conferencing process to be used and provides information explaining how lot owners may participate in the conference directly or by meeting at a central location or conference connection.

(2) The process provides all lot owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d) of this section.

(d) Lot owners must be given a reasonable opportunity at any meeting, including meetings of the executive board, to comment regarding any matter affecting the planned community or the association.

(e) Meetings of the executive board and committees of the association authorized to act for the association must be open to the lot owners except during executive sessions. The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only for the following purposes:

(1) To consult with the association's attorney concerning legal matters.

(2) To discuss existing or potential litigation or mediation, arbitration, or administrative proceedings.

(3) To discuss labor or personnel matters.

(4) To discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(5) To prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

(f) For purposes of this section, a gathering of board members at which the board members do not conduct association business is not a meeting of the executive board. The executive board and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

(g) During the period of declarant control, the executive board shall meet at least four times a year. At least one of those meetings must be held at the planned community or at a place convenient to the community. After termination of the period of declarant control, all executive board meetings must be at the planned community or at a place convenient to the community unless the lot owners amend the bylaws to vary the location of those meetings.

(h) Unless the meeting is included in a schedule given to the lot owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each executive board meeting to each board member and to the lot owners. The notice must be given not less than 10 days nor more than 60 days before the meeting and must state the time, date, place, and agenda of the meeting.

(i) If any materials are distributed to the executive board before the meeting, the executive board at the same time shall make copies of those materials reasonably available to lot owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(j) Unless the declaration or bylaws otherwise provide, the executive board may meet by telephonic, video, or other conferencing process if both of the following conditions are met:

(1) The meeting notice states the conferencing process to be used and provides information explaining how lot owners may participate in the conference directly or by meeting at a central location or conference connection.

(2) The process provides all lot owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d).

(k) After termination of any period when the declarant controls the association, lot owners may amend the bylaws to vary the procedures for meetings described in subsection (j).

(l) Instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all lot owners of any action taken by unanimous consent. After termination of the period of declarant control, the executive board may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the executive board.

(m) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than 60 days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to lot owners, whichever is later."

SECTION 4. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a)Any assessment levied against a lot remaining unpaid for a period of ~~30~~ 90 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due and an offer to accept payments in installments by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the ~~association~~ association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate ~~under power of sale~~ under Article 2A of Chapter 45 of the General ~~Statutes.~~ Statutes, if the assessment remains unpaid for 90 days or more and the lot owner has failed to accept or comply with the proposed installment schedule. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(b1) An association shall apply any payments made by the lot owner in the following priority:

(1) Unpaid assessments.
(2) Late charges associated with the assessment.
(3) Attorneys' fees and other collection charges.
(4) Fees, fines, interest, and associated late fees.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The ~~association, acting through its executive board and in the board's sole discretion, may agree to~~ association shall allow payment of an outstanding balance in installments. ~~Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule.~~ The association shall mail a statement of the assessment amount due and an offer to accept payments under a proposed installment schedule in accordance with subsection (a) of this section. If the lot owner accepts the proposed installment schedule and subsequently fails to comply with the terms of the schedule, the association may file a claim of lien in accordance with subsection (a) of this section when a scheduled payment remains unpaid for 30 days or longer. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be

liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 5.(a) G.S. 47F-3-118 reads as rewritten:

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

(a) ~~The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities.~~ The association must retain the following:

(1) Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records.

(2) Minutes of all meetings of its lot owners and executive board other than executive sessions, a record of all actions taken by the lot owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association.

(3) The names of lot owners in a form that permits preparation of a list of the names of all lot owners and the addresses at which the association

communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast.

(4) Its original or amended organizational documents, bylaws and all amendments to them, and all rules currently in effect.

(5) All financial statements and tax returns of the association for the past three years.

(6) A list of the names and addresses of its current executive board members and officers.

(7) Its most recent annual income and expense statement and balance sheet as required by subsection (a1) of this section.

(8) Financial and other records sufficiently detailed to enable the association to comply with other requirements of law.

(9) Copies of current contracts to which it is a party.

(10) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from lot owners.

(11) Ballots, proxies, and other records related to voting by lot owners for one year after the election, action, or vote to which they relate.

(a1) In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

~~(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board.~~

(d) Subject to subsections (e) and (f) of this section, all records retained by an association must be available for examination and copying by a lot owner or the owner's authorized agent as follows:

(1) During reasonable business hours or at a mutually convenient time and location.

(2) Upon 15 days notice in a record reasonably identifying the specific records of the association requested.

(e) Records retained by an association may be withheld from inspection and copying to the extent that they concern one of the following matters:

(1) Personnel, salary, and medical records relating to specific individuals.

(2) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated.

(3) Existing or potential litigation or mediation, arbitration, or administrative proceedings.

(4) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules and regulations.

(5) Communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work- product doctrine.

(6) Information the disclosure of which would violate law other than this [act];

(7) Records of an executive session of the executive board.

(8) Individual lot files other than those of the requesting owner.

(f) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the lot owner's inspection.

(g) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the lot owner.

(h) An association is not obligated to compile or synthesize information.

(i) Information provided pursuant to this section may not be used for commercial purposes."

SECTION 5.(b) G.S. 47F-3-103 is amended by adding a new subsection to read:

"(g) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

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

"**§ 47F-3-120.1 Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter, an association's declaration, bylaws, or rules and regulations, may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

SECTION 7. G.S. 47F-1-103 is amended by adding two new subdivisions to read:

"**§ 47F-1-103. Definitions.**

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Chapter:

(1) ~~Reserved.~~"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent (20%) of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

...

(14) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a lot, but the term does not include the transfer or release of a security interest."

SECTION 8.(a) G.S. 47F-3-103(d) reads as rewritten:

"**§ 47F-3-103. Executive board members and officers.**

...

(d) ~~The~~ Subject to subsection (d1), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 120 days after conveyance of seventy-five percent (75%) of the lots (including lots which may be created pursuant to special declarant rights) to lot owners other than a declarant; (ii) two years after all declarants have ceased to offer lots for sale in the ordinary course of business; or (iii) two years after any development right to add new lots was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective."

SECTION 8.(b) G.S. 47F-3-103 is amended by adding a new subsection to read:

"(d1) Not later than 60 days after conveyance of twenty-five percent (25%) of the lots (including lots which may be created pursuant to special rights) to lot owners other

than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by lot owners other than a declarant. Not later than 60 days after conveyance of fifty percent (50%) of the lots (including lots which may be created pursuant to special declarant rights) to lot owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by lot owners other than the declarant."

SECTION 8.(c) G.S. 47F-3-104 reads as rewritten:

"**§ 47F-3-104. Transfer of special declarant rights.**

~~Except for transfer of declarant rights pursuant to foreclosure, no~~(a)No special declarant right (G.S. 47F-1-103(28)) may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer, including, but not limited to, liability or obligations relating to warranties. Lack of privity does not deprive any lot owner of standing to bring an action to enforce any obligation of the transferor.

(2) If the successor to any special declarant right is an affiliate of a declarant (G.S. 47F-1-103), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the planned community.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractural or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure or a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any lots owned by a declarant, or real estate in a lot subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon the person's request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceeding, of all lots and other real estate in the planned community owned by a declarant the declarant ceases to have any special declarant rights.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor related to the planned community.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) who is not an affiliate of a declarant, is subject to all obligations and liabilities:

a. On a declarant which relate to the declarant's exercise or nonexercise of special declarant right; or

b. On the declarant's transferor, other than:

(i) Misrepresentation by any prior declarant;

(ii) Warranty obligations on improvements made by any previous declarant, or made before the planned community was created;

(iii) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the executive board; or

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to lots under subsection (c), may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any lot owned by the successor, or until recording an instrument permitting exercise of all those rights other than the right held by the transferor to control the executive board in accordance with the provisions of G.S. 47F-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under G.S. 47F-3-103(d)."

SECTION 8.(d) G.S. 47F-3-105 reads as rewritten:

"**§ 47F-3-105. Termination of contracts and leases of declarant.**

If entered into before the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office, ~~any contract or lease affecting or related to the planned community~~(1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or leases between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the lot owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office upon not less than 90 days' notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the association before the executive board elected by the

lot owners takes office. Failure of the contract to contain such a provision shall not effect the rights of the association under this section."

SECTION 8.(e) G.S. 47F-3-111 reads as rewritten:

"**§ 47F-3-111. Tort and contract liability.**

(a) Neither the association nor any lot owner except the declarant is liable for that declarant's torts in connection with any part of the planned community which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association shall be brought against the association and not against a lot owner.

(c) If an action is brought against the association for a wrong which occurred during any period of declarant control, and if the association gives the declarant who then controlled the association reasonable notice of and an opportunity to defend against the action, such declarant is liable to the association:

(1) for all tort losses not covered by insurance carried by the association suffered by the association or that lot owner, and

(2) for all losses which the association would not have incurred but for a breach of contract. Nothing in this subsection shall be construed to impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

~~(c)~~(d) In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A lot owner is not precluded from bringing an action contemplated by this section because the person is a lot owner or a member of the association."

SECTION 9.(a) G.S. 47F-3-102(13) reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

...

(13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration, resale certificates required by G.S. 47F-4-109, or statements of unpaid assessments;"

SECTION 9.(b) Chapter 47F of the General Statutes is amended to add a new Article to read:

"ARTICLE 4

"Disclosures to Purchasers.

"G.S. 47F-4-101. Applicability, waiver.

(a) This Article applies to the disposition of all lots that are part of a planned community subject to this Chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of lots in a planned community in which all lots are restricted to non-residential use.

(b) No disclosure certificate as provided for in G.S. 47F-4-103 need be prepared or delivered in the case of:

(1) a gratuitous disposition of a unit;

(2) a disposition pursuant to court order;
(3) a disposition by a government or governmental agency;
(4) a disposition by foreclosure or deed in lieu of foreclosure;
(5) a disposition to a dealer;
(6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty;
(7) a disposition of property restricted to nonresidential purposes.

"**§ G.S. 47F-4-102. Purchaser's Right to Cancel**"

(a) A person required to deliver a disclosure certificate pursuant to G.S. 47F-4-103(a) shall provide a purchaser with a copy of the certificate before conveyance of the lot, and not later than the date of any contract of sale. Unless a purchaser is given the disclosure certificate more than 5 days before execution of a contract for the purchase of the lot, 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.

(b) A purchaser who elects to cancel a contract pursuant to subsection (a) may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to the offeror's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

"**§ G.S. 47F-4– 103. Disclosures to be made to purchasers.**

(a) Unless exempt under G.S. 47F-4-101(b), a seller of lot that is part of a planned community shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of the lot, 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 lot 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 owner who is selling the lot;
(3) a statement of any other fees payable by the owner who is selling the lot;
(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 lot owners;
(10) a statement as to whether the executive board has given or received written notice that any existing uses, occupancies, alterations, or

improvements in or to the lot or to the limited common element assigned thereto violate any provision of the declaration;

(11) a statement as to whether the executive board has received written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the lot, the limited common elements assigned thereto, or any other portion of the planned community which has not been cured;

(12) a statement of the remaining term of any leasehold estate affecting the planned 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 lot owner upon sale, condemnation, casualty loss to the lot or the planned community, or termination of the planned community;

(14) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the lot 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 lot to be conveyed of any restrictions on the owner's right to use or occupy the lot or to lease the lot to another person.

(b) The association, within 10 days after a request by a lot owner, shall furnish a certificate containing the information and copies of all documents necessary to enable the lot owner to comply with this section. A lot 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 lot owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner."

SECTION 9.(c) The North Carolina Real Estate Commission shall revise the Residential Property Disclosure Statement developed by it pursuant to G.S. 47E-4 to provide a place for disclosure by sellers of the existence of any homeowners association with responsibility for enforcing rules and regulations relating to the real property and the existence of any restrictive covenants affecting the real property, regardless of whether such restrictive covenants are currently violated by any condition of the real property.

SECTION 10. This act is effective when it becomes law, and applies to all: (1) planned communities created in this State on or after that date, which contain more than 20 residential lots; and (2) planned communities created in this State before that date, which contain more than 20 residential lots, except that the act applies only with respect to events and circumstances occurring on after that date and does not invalidate existing provisions of the declaration, bylaws, or plats or plans of those planned communities. The declaration, bylaws, or plats and plans of any planned community

created before the effective date of this act may be amended to achieve any result permitted by this act, regardless of what applicable law provided before that date.