

## 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.

(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 building design plans 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, as evidenced by a recorded certificate of completion executed by the architect or engineer; provided, however, that (i) such requirement shall not apply to any unit or portion of a unit, the boundaries of which comprise solely surface space, airspace, subterranean space, or any specified combination thereof, as provided in G.S. 47C-2-105(a)(5) and (ii) nothing in this subsection shall require that the structural components and mechanical systems of buildings be depicted on the plats or plans described in G.S. 47C-2-109(b)(6). (1985 (Reg. Sess., 1986), c. 877, s. 1; 2012-18, s. 1.5; 2020-52, s. 4; 2022-12, s. 2(b).)

#### **§ 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 all of the following:
- (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. A declaration may define a unit to include all or any portion of the airspace or subterranean space between two legally identifiable elevations, to include or exclude the surface of a legally described parcel of real property, to include or exclude airspace lying above and subterranean space lying below such surface, and to mean any specified combination of the foregoing, whether or not contiguous. A unit that is not specifically described by an upper limiting boundary with reference to established datum shall be deemed to include so much of the land and air above the unit as would be attributed to a noncondominium parcel of land under the common or statutory law applicable to such noncondominium parcel of land. A unit that is not specifically described by a lower limiting elevation boundary with reference to established datum shall be deemed to include so much of the land and air below the unit as would be attributed to a noncondominium parcel of land under the common or statutory law applicable to such noncondominium parcel of land.
  - (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 or date

by which each of those rights must be exercised; provided, however, that if no time limit or date is specified for the exercise of any particular development right or other special declarant right is specified in the declaration, the time limit for the exercise of that right shall be seven years from the date the declaration was recorded or by July 1, 2027, whichever is later. Notwithstanding the foregoing, the unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, exclusive of any votes appurtenant to any unit owned by the declarant, may consent to an extension, not exceeding 10 years from the expiration of any time limit for the exercise of any development right or special declarant right as specified in the declaration. An extension of a development right or special declarant right is effective upon recording of an amendment to the declaration approved by the unit owners as provided in this subdivision, provided that such amendment must be recorded prior to the expiration of the development right or special declarant right affected by such amendment. Approval by the required number of unit owners may be evidenced by execution of the amendment by the requisite number of unit owners or by certification of an officer of the association executing such amending confirming that the requisite number of unit owners approved such amendment at a duly called meeting of the unit owners.

- (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.
- (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; 2020-52, s. 2; 2022-12, s. 2(a).)

#### **§ 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.

(b) Each plat or plan or combination thereof must show all of the following:

- (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 (i) the locations and dimensions of the horizontally limiting boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, (ii) the location of any vertically limiting boundaries, with reference to established datum, and (iii) an identifying number for each unit.

(6a) The certification of a Professional Land Surveyor licensed under the provisions of Chapter 89C of the General Statutes, that the plat conforms to the

requirements of subdivisions (1), (2), (3), (4), (5), (7), (8), and (9) of this subsection. The location and dimensions referred to in these subdivisions shall be expressed in the plat in azimuths or courses and distances. Distances shall be in feet or meters and decimals thereof. Tie lines to an external boundary which is itself located and dimensioned are required for buildings containing or comprising any units that are not coincident with said external boundary. Each vertically limiting unit boundary (commonly known as elevation) shall be expressed in feet or meters and decimals as the distance above the referenced datum. The certification required by this subsection shall also state that the plat meets the requirements of NCAC Title 21, Chapter 56 (Board Rules).

- (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 prepared under subsection (b) of this section shall comply with G.S. 47-30(a) and with either G.S. 47-30(b) or G.S. 47-30(o).

(f) The fee for recording each plat or plan sheet submitted shall be as prescribed by G.S. 161-10(a)(3).

(g) The provisions of this Article and of condominium instruments recorded pursuant thereto shall be liberally construed in favor of the valid establishment of a condominium with respect to the submitted property. (1985 (Reg. Sess., 1986), c. 877, s. 1; 1987, c. 282, s. 8; 1989, c. 571; 2012-18, s. 1.6; 2020-52, s. 1.)

#### **§ 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. Monuments as boundaries.**

(a) The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability for willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, for failure to adhere to any representation in the public offering statement.

(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; 2020-52, s. 5.)

**§ 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-2-106(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) of this section, 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) As long as the approval requirements for any amendment adopted pursuant to this section or G.S. 47C-2-105(a)(8) have been met, no action to challenge the validity of an amendment adopted by the association pursuant to this section or pursuant to G.S. 47C-2-105(a)(8) shall 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 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 shall 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.

(f) This Article and the condominium instruments recorded pursuant to it shall be liberally construed in favor of the valid establishment of a condominium with respect to the submitted property. Except as otherwise provided in the declaration or explicitly prohibited by this Chapter, if any amendment to the declaration is necessary in the judgment of the executive board, then the executive board may, at its discretion, propose an amendment to the declaration for any of the following purposes:

- (1) To cure any ambiguity, to establish marketable title to units, or to correct or supplement any provision of the declaration, including plats or plans, that is defective, missing, or inconsistent with any other provision of the declaration or with this Chapter.
- (2) To conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in condominium projects, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

- (3) To comply with any statute, regulation, code, or ordinance applicable to the condominium or association.
- (4) To make a reasonable accommodation or permit a reasonable modification in favor of persons with disabilities, as may be defined by federal or State laws or regulations applicable to the association or its employees, unit owners, residents, or tenants.

The authority granted to the executive board under this subsection does not limit the authority of the executive board to propose any amendment for any other purpose permitted in the declaration or by this Chapter. Upon approval by the executive board of an amendment pursuant to this subsection, the executive board shall set a date for a meeting of the unit owners to consider ratification of the amendment not less than 10 nor more than 60 days after mailing of notice of the meeting. The notice shall include a copy or summary of the proposed amendment. There is no requirement that a quorum be present at the meeting. The amendment is ratified by the unit owners unless at that meeting unit owners holding a majority of the votes in the association reject the amendment. Any amendment recorded pursuant to this subsection in the office of the register of deeds in the county or counties where the condominium is located operates as a correction of the declaration being corrected that relates back to, and is effective as of, the date the declaration being corrected was originally recorded in the office of the register of deeds, with the same effect as if the declaration were correct when the declaration was first recorded. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2020-52, s. 3(a); 2022-62, s. 55.)

#### **§ 47C-2-117.1. Judicial reformation of declaration.**

(a) A unit owners' association may bring a civil action in superior court in the county where the condominium or the greater part thereof is located to reform the condominium instruments to resolve ambiguities, errors, or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners. The condominium instruments may also be reformed to correct scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

The superior court shall have jurisdiction over matters set forth in G.S. 47C-2-117(f) regarding ownership of marketable title of the common elements or units and may, upon consideration of pleadings and such other matters as the court may in its exercise of equity allow, order (i) reformation, in whole or in part, of any provision of the condominium instruments and (ii) correction of mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose set forth in G.S. 47C-2-117.1(f).

(b) A complaint filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that all of the following requirements have been met:

- (1) The unit owners' association has made at least three good-faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in the complaint, and where the attempts to convene a duly called meeting have been unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

- (2) Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant has joined in the complaint of the unit owners' association.
- (3) A copy of the complaint has been served in accordance with Rule 4(j), 4(j1), or Rule 4(j5) of the North Carolina Rules of Civil Procedure on all unit owners and all beneficiaries of a deed of trust or mortgagees of record for a unit in the condominium.
- (4) The complaint notifies the recipient that if the recipient does not timely respond to the complaint pursuant to Article 3 of the North Carolina Rules of Civil Procedure, then the relief sought may be granted by the clerk of superior court.
- (5) No written response objecting to or disputing the petition is received within 45 days from the date the last person to be served was served with the complaint as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

(c) If the response of any person served with the complaint objects to or disputes the complaint, the action shall be transferred to the civil docket of the superior court for further proceedings.

(d) Any unit owner or beneficiary of a deed of trust or mortgagee of a condominium unit in the condominium objecting to or disputing the complaint shall have standing to participate in the reformation action. No reformation pursuant to this section shall affect the rights, priority of the lien, or otherwise materially impair or affect any condominium unit as collateral for a deed of trust or mortgage, or affect a beneficiary of a deed of trust or mortgagee's right to foreclose on a condominium unit as collateral without the duly acknowledged written consent of the beneficiary of the deed of trust or mortgagee.

(e) Nothing contained in this section shall prevent or preclude any unit owner or owners, at any time, from filing an action in superior court for judicial reformation related to the title, formation, or construction of the condominium declaration, plat or plans, to establish marketable title to the owner's or owners' unit or units.

(f) In any action brought under this section, the person prosecuting the reformation action must file a notice of pending litigation complying with Article 11 of Chapter 1 of the General Statutes.

(g) The period prescribed for the commencement of a collateral action contesting a judgment ordering reformation or correction under this section shall be one year from the date of entry of the judgment. This subsection does not apply to an action for damages sustained by any party as a result of the reformation or correction. (2020-52, s. 3(b).)

**§ 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.)