§ 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. Except for the transfer of declarant rights pursuant to subsection (c) of this section, 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 and remains liable for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any unit owner of standing to maintain 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, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, 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, or real estate subject to development rights for a condominium, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request in an instrument recorded with the register of deeds in every county where any portion of the condominium is located, succeeds to all special declarant rights (G.S. 47C-1-103(23)) related to the property held by that declarant and requested by the person acquiring title. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested. The mortgage, deed of trust, tax lien, or other conveyance to be foreclosed under this subsection shall not be required to contain specific reference to an assignment of special declarant rights but shall be deemed to include the special declarant rights as part of the right, title, and interest encumbered by the mortgage, deed of trust, tax lien, or other conveyance.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, 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 and the period of declarant control (G.S. 47C-3-103(d)) terminates unless either of the following applies:

(1) The judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(2) The declarant transferred special declarant rights related to the appointment of executive board members to another person pursuant to this section prior to the foreclosure or sale.

(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 by this Chapter or by the declaration.

(2) Unless otherwise specified in the declaration as to the holder of a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, a successor to any special declarant right who is not an affiliate of a declarant, other than a successor described in subdivision (3) or (4) of this subsection, is subject to the obligations and liabilities expressly imposed by this Chapter or the declaration:

a. On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or

b. On the declarant's transferor, other than any of the following:

1. Misrepresentations by the transferor or any previous declarant.

2. Warranty obligations on improvements made by the transferor or any previous declarant, or made before the condominium was created.

3. Breach of any fiduciary obligation by the transferor or any previous declarant or the declarant's appointees to the executive board.

4. Any liability or obligation imposed on the transferor or any previous declarant as a result of the transferor's acts or omissions after the transfer.

5. Obligations and liabilities arising out of contractual agreements between the transferor or any previous declarant and third parties other than those contained in the declaration.

(3) A successor to only a right reserved in the declaration to maintain models, management offices, sales offices, and signs advertising the condominium (G.S. 47C-2-115), if the successor 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 a transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) of this section, may declare in a recorded instrument the intention 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, that successor may not exercise any of those rights other than the right held by the successor's 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 does not have the right to 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 the successor declarant's acts and omissions under G.S. 47C-3-103(d).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against, or other obligations of, a transferor declarant other than claims and obligations expressly arising under this Chapter or the declaration.

(g) For the purposes of this section, "assignment of declarant rights" shall include any assignment by the declarant of special declarant rights to a person, including, without limitation, an assignment pursuant to this section. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2015-56, s. 2.)