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

(a) No special declarant right (G.S. 47F-1-103(28)) defined under this Chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community 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 lot owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (G.S. 47F-1-103(1)), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the planned community.

(3) If a transferor retains any special declarant rights 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 lots owned by a declarant, or real estate in a planned community subject to development rights, or real estate subject to development rights for a planned community, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request in an instrument recorded in every county in which any portion of the planned community is located, succeeds to all special declarant rights (G.S. 47F-1-103(28)) related to that 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 interests in a planned community owned by a declarant, the declarant ceases to have any special declarant rights and the period of declarant control (G.S. 47F-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 a person who succeeds 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 his or her transferor, other than:

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 planned community was created;

3. Obligations and liabilities arising out of contractual agreements between the transferor or any previous declarant and third parties other than the declaration;

4. Breach of any fiduciary obligation by the transferor or any previous declarant or his or her appointees to the executive board; or

5. 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.

(3) A successor to only a right reserved in the declaration to maintain sales offices, management offices, signs advertising the planned community, and models, if the successor is not an affiliate of the declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant.

(4) A successor to all special declarant rights held by a transferor who is not an affiliate of the declarant 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 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 lot or real estate subject to development rights 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 any right held by his or her transferor to control the

executive board in accordance with 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 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 his or her acts and omissions under G.S. 47F-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 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. (1998-199, s. 1; 2014-57, s. 3.)