

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 801
House Committee Substitute Favorable 8/17/98
House Committee Substitute #2 Favorable 9/23/98

Short Title: N.C. Planned Community Act.

(Public)

Sponsors:

Referred to:

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY
3 ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to read:

6 **"CHAPTER 47E.**

7 **"NORTH CAROLINA PLANNED COMMUNITY ACT.**

8 **"ARTICLE 1.**

9 **"GENERAL PROVISIONS.**

10 **"§ 47E-1-101. Short title.**

11 This Chapter shall be known and may be cited as the North Carolina Planned
12 Community Act.

13 **"§ 47E-1-102. Applicability.**

14 (a) This Chapter applies to all planned communities within this State except as
15 provided in subsection (b) of this section.

16 (b) This Chapter does not apply to a planned community created within this State:

17 (1) Which contains no more than 20 lots (including all lots which may be
18 added or created by the exercise of development rights) unless the

1 declaration provides or is amended to provide that this Chapter does
2 apply to that planned community; or

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

6 (c) This Chapter does not apply to planned communities or lots located outside
7 this State.

8 (d) Any planned community created prior to the effective date of this Chapter may
9 elect to make the provisions of this Chapter applicable to it by amending its declaration to
10 provide that this Chapter shall apply to that planned community. The amendment may be
11 made by affirmative vote or written agreement signed by lot owners of lots to which at
12 least sixty-seven percent (67%) percent of the votes in the association are allocated or any
13 smaller majority the declaration specifies. To the extent the procedures and requirements
14 for amendment in the declaration conflict with the provisions of this subsection, this
15 subsection shall control with respect to any amendment to provide that this Chapter
16 applies to that planned community.

17 **"§ 47E-1-103. Definitions.**

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

20 (1) Reserved.

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

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

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

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

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

32 (7) 'Condominium' means real estate, as defined and created under Chapter
33 47C.

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

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

- 1 (10) 'Declaration' means any instruments, however denominated, that create
2 a planned community and any amendments to those instruments.
- 3 (11) Reserved.
- 4 (12) Reserved.
- 5 (13) 'Executive board' means the body, regardless of name, designated in the
6 declaration to act on behalf of the association.
- 7 (14) Reserved.
- 8 (15) Reserved.
- 9 (16) 'Leasehold planned community' means a planned community in which
10 all or a portion of the real estate is subject to a lease, the expiration or
11 termination of which will terminate the planned community or reduce
12 its size.
- 13 (17) 'Lessee' means the party entitled to present possession of a leased lot
14 whether lessee, sublessee, or assignee.
- 15 (18) 'Limited common element' means a portion of the common elements
16 allocated by the declaration or by operation of law for the exclusive use
17 of one or more but fewer than all of the lots.
- 18 (19) 'Lot' means a physical portion of the planned community designated for
19 separate ownership or occupancy by a lot owner.
- 20 (20) 'Lot owner' means a declarant or other person who owns a lot, or a
21 lessee of a lot in a leasehold planned community whose lease expires
22 simultaneously with any lease the expiration or termination of which
23 will remove the lot from the planned community, but does not include a
24 person having an interest in a lot solely as security for an obligation.
- 25 (21) 'Master association' means an organization described in G.S. 47E-2-120,
26 whether or not it is also an association described in G.S. 47E-3-101.
- 27 (22) 'Person' means a natural person, corporation, business trust, estate, trust,
28 partnership, association, joint venture, government, governmental
29 subdivision or agency, or other legal or commercial entity.
- 30 (23) 'Planned community' means real estate with respect to which any
31 person, by virtue of that person's ownership of a lot, is expressly
32 obligated by a declaration to pay real property taxes, insurance
33 premiums, or other expenses to maintain, improve, or benefit other lots
34 or other real estate described in the declaration. For purposes of this act,
35 neither a cooperative nor a condominium is a planned community, but
36 real estate comprising a condominium or cooperative may be part of a
37 planned community. 'Ownership of a lot' does not include holding a
38 leasehold interest of less than 20 years in a lot, including renewal
39 options.
- 40 (24) 'Purchaser' means any person, other than a declarant or a person in the
41 business of selling real estate for the purchaser's own account, who by
42 means of a voluntary transfer acquires a legal or equitable interest in a

1 lot, other than (i) a leasehold interest (including renewal options) of less
2 than 20 years, or (ii) as security for an obligation.

3 (25) 'Reasonable attorneys' fees' means attorneys' fees reasonably incurred
4 without regard to any limitations on attorneys' fees which otherwise
5 may be allowed by law.

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

12 (27) Reserved.

13 (28) 'Special declarant rights' means rights reserved for the benefit of a
14 declarant including, without limitation, any right (i) to complete
15 improvements indicated on plats and plans filed with the declaration;
16 (ii) to exercise any development right; (iii) to maintain sales offices,
17 management offices, signs advertising the planned community, and
18 models; (iv) to use easements through the common elements for the
19 purpose of making improvements within the planned community or
20 within real estate which may be added to the planned community; (v) to
21 make the planned community part of a larger planned community or
22 group of planned communities; (vi) to make the planned community
23 subject to a master association; or (vii) to appoint or remove any officer
24 or executive board member of the association or any master association
25 during any period of declarant control.

26 (29) Reserved.

27 **"§ 47E-1-104. Variation.**

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

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

33 (c) Notwithstanding any of the provisions of this Chapter, a declarant may not act
34 under a power of attorney or proxy or use any other device to evade the limitations or
35 prohibitions of this Chapter, the declaration, or the bylaws.

36 **"§ 47E-1-105: Reserved.**

37 **"§ 47E-1-106. Applicability of local ordinances, regulations, and building codes.**

38 A zoning, subdivision, or building code or other real estate use law, ordinance, or
39 regulation may not prohibit a planned community or impose any requirement upon a
40 planned community which it would not impose upon a substantially similar development
41 under a different form of ownership or administration. Otherwise, no provision of this
42 Chapter invalidates or modifies any provision of any zoning, subdivision, or building
43 code or any other real estate use law, ordinance, or regulation. No local ordinance or

1 regulation may require the recordation of a declaration prior to the date required by this
2 Chapter.

3 **"§ 47E-1-107. Eminent domain.**

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

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

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

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

30 (e) The court decree shall be recorded in every county in which any portion of the
31 planned community is located.

32 **"§ 47E-1-108. Supplemental general principles of law applicable.**

33 The principles of law and equity as well as other North Carolina statutes (including
34 the provisions of the North Carolina Nonprofit Corporation Act) supplement the
35 provisions of this Chapter, except to the extent inconsistent with this Chapter. When
36 these principles or statutes are inconsistent or conflict with this Chapter, the provisions of
37 this Chapter will control.

38 **"§§ 47E-1-109 through 47E-1-115: Reserved.**

39 **"ARTICLE 2.**

40 **"CREATION, ALTERATION, AND TERMINATION OF PLANNED**
41 **COMMUNITIES.**

42 **"§ 47E-2-101. Creation of the planned community.**

1 A declaration creating a planned community shall be executed in the same manner as
2 a deed, shall be recorded in every county in which any portion of the planned community
3 is located, and shall be indexed in the Grantee index in the name of the planned
4 community and the association and in the Grantor index in the name of each person
5 executing the declaration.

6 **"§ 47E-2-102: Reserved.**

7 **"§ 47E-2-103. Construction and validity of declaration and bylaws.**

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

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

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

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

18 **"§§ 47E-2-104 through 47E-2-116: Reserved.**

19 **"§ 47E-2-117. Amendment of declaration.**

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

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

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

34 (d) Reserved.

35 (e) Amendments to the declaration required by this Chapter to be recorded by the
36 association shall be prepared, executed, recorded, and certified in accordance with G.S.
37 47-41.

38 **"§ 47E-2-118. Termination of planned community.**

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

1 percentage only if all of the lots in the planned community are restricted exclusively to
2 nonresidential uses.

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

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

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

21 (e) If the real estate constituting the planned community is not to be sold following
22 termination, title to the common elements vests in the lot owners upon termination as
23 tenants in common in proportion to their respective interests as provided in the
24 termination agreement.

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

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

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

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

6 **"§ 47E-2-119: Reserved.**

7 **"§ 47E-2-120. Master associations.**

8 If the declaration for a planned community provides that any of the powers described
9 in G.S. 47E-3-102 are to be exercised by or may be delegated to a profit or nonprofit
10 corporation which exercises those or other powers on behalf of one or more other planned
11 communities or for the benefit of the lot owners of one or more other planned
12 communities, all provisions of this act applicable to lot owners' associations apply to any
13 such corporation.

14 **"§ 47E-2-121. Merger or consolidation of planned communities.**

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

23 (b) An agreement of two or more planned communities to merge or consolidate
24 pursuant to subsection (a) of this section shall be evidenced by an agreement prepared,
25 executed, recorded, and certified by the president of the association of each of the
26 preexisting planned communities following approval by owners of lots to which are
27 allocated the percentage of votes in each planned community required to terminate that
28 planned community. Any such agreement shall be recorded in every county in which a
29 portion of the planned community is located and is not effective until recorded.

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

39 **"§ 47E-2-122: Reserved.**

"ARTICLE 3.

"MANAGEMENT OF PLANNED COMMUNITY.

42 **"§ 47E-3-101. Organization of owners' association.**

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

7 **"§ 47E-3-102. Powers of owners' association.**

8 Subject to the provisions of the articles of incorporation or the declaration and the
9 declarant's rights therein, the association may:

- 10 (1) Adopt and amend bylaws and rules and regulations;
- 11 (2) Adopt and amend budgets for revenues, expenditures, and reserves and
12 collect assessments for common expenses from lot owners;
- 13 (3) Hire and discharge managing agents and other employees, agents, and
14 independent contractors;
- 15 (4) Institute, defend, or intervene in litigation or administrative proceedings
16 on matters affecting the planned community;
- 17 (5) Make contracts and incur liabilities;
- 18 (6) Regulate the use, maintenance, repair, replacement, and modification of
19 common elements;
- 20 (7) Cause additional improvements to be made as a part of the common
21 elements;
- 22 (8) Acquire, hold, encumber, and convey in its own name any right, title, or
23 interest to real or personal property, provided that common elements
24 may be conveyed or subjected to a security interest only pursuant to
25 G.S. 47E-3-112;
- 26 (9) Grant easements, leases, licenses, and concessions through or over the
27 common elements;
- 28 (10) Impose and receive any payments, fees, or charges for the use, rental, or
29 operation of the common elements other than the limited common
30 elements and for services provided to lot owners;
- 31 (11) Impose reasonable charges for late payment of assessments and, after
32 notice and an opportunity to be heard, suspend privileges or services
33 provided by the association (except rights of access to lots) during any
34 period that assessments or other amounts due and owing to the
35 association remain unpaid for a period of 30 days or longer;
- 36 (12) After notice and an opportunity to be heard, impose reasonable fines or
37 suspend privileges or services provided by the association (except rights
38 of access to lots) for reasonable periods for violations of the declaration,
39 bylaws, and rules and regulations of the association;
- 40 (13) Impose reasonable charges in connection with the preparation and
41 recordation of documents, including, without limitation, amendments to
42 the declaration or statements of unpaid assessments;

- 1 (14) Provide for the indemnification of and maintain liability insurance for
2 its officers, executive board, directors, employees, and agents;
3 (15) Assign its right to future income, including the right to receive common
4 expense assessments;
5 (16) Exercise all other powers that may be exercised in this State by legal
6 entities of the same type as the association; and
7 (17) Exercise any other powers necessary and proper for the governance and
8 operation of the association.

9 **"§ 47E-3-103. Executive board members and officers.**

10 (a) Except as provided in the declaration, in the bylaws, in subsection (b) of this
11 section, or in other provisions of this Chapter, the executive board may act in all
12 instances on behalf of the association. In the performance of their duties, officers and
13 members of the executive board shall discharge their duties in good faith. Officers shall
14 act according to the standards for officers of a nonprofit corporation set forth in G.S.
15 55A-8-42, and members shall act according to the standards for directors of a nonprofit
16 corporation set forth in G.S. 55A-8-30.

17 (b) The executive board may not act unilaterally on behalf of the association to
18 amend the declaration (G.S. 47E-2-117), to terminate the planned community (G.S. 47E-
19 2-118), or to elect members of the executive board or determine the qualifications,
20 powers and duties, or terms of office of executive board members (G.S. 47E-3-103(f)),
21 but the executive board may unilaterally fill vacancies in its membership for the
22 unexpired portion of any term. Notwithstanding any provision of the declaration or
23 bylaws to the contrary, the lot owners, by a majority vote of all persons present and
24 entitled to vote at any meeting of the lot owners at which a quorum is present, may
25 remove any member of the executive board with or without cause, other than a member
26 appointed by the declarant.

27 (c) Within 30 days after adoption of any proposed budget for the planned
28 community, the executive board shall provide to all the lot owners a summary of the
29 budget and a notice of the meeting to consider ratification of the budget, including a
30 statement that the budget may be ratified without a quorum. The executive board shall set
31 a date for a meeting of the lot owners to consider ratification of the budget, such meeting
32 to be held not less than 10 nor more than 60 days after mailing of the summary and
33 notice. There shall be no requirement that a quorum be present at the meeting. The
34 budget is ratified unless at that meeting a majority of all the lot owners in the association
35 or any larger vote specified in the declaration rejects the budget. In the event the
36 proposed budget is rejected, the periodic budget last ratified by the lot owners shall be
37 continued until such time as the lot owners ratify a subsequent budget proposed by the
38 executive board.

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

42 (e) Not later than the termination of any period of declarant control, the lot owners
43 shall elect an executive board of at least three members, at least a majority of whom shall

1 be lot owners. The executive board shall elect the officers. The executive board
2 members and officers shall take office upon election.

3 **"§ 47E-3-104. Transfer of special declarant rights.**

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

8 **"§ 47E-3-105. Termination of contracts and leases of declarant.**

9 If entered into before the executive board elected by the lot owners pursuant to G.S.
10 47E-3-103(e) takes office, any contract or lease affecting or related to the planned
11 community that is not bona fide or was unconscionable to the lot owners at the time
12 entered into under the circumstances then prevailing, may be terminated without penalty
13 by the association at any time after the executive board elected by the lot owners pursuant
14 to G.S. 47E-3-103(e) takes office upon not less than 90 days' notice to the other party.

15 **"§ 47E-3-106. Bylaws.**

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

- 17 (1) The number of members of the executive board and the titles of the
18 officers of the association;
19 (2) Election by the executive board of officers of the association;
20 (3) The qualifications, powers and duties, terms of office, and manner of
21 electing and removing executive board members and officers and filling
22 vacancies;
23 (4) Which, if any, of its powers the executive board or officers may
24 delegate to other persons or to a managing agent;
25 (5) Which of its officers may prepare, execute, certify, and record
26 amendments to the declaration on behalf of the association; and
27 (6) The method of amending the bylaws.

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

30 **"§ 47E-3-107. Upkeep of planned community; responsibility and assessments for
31 damages.**

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

42 (b) If a lot owner is legally responsible for damage inflicted on any common
43 element, the association may direct such lot owner to repair such damage, or the

1 association may itself cause the repairs to be made and recover damages from the
2 responsible lot owner.

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

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

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

29 **§ 47E-3-107A. Procedures for fines and suspension of planned community**
30 **privileges or services.**

31 Unless a specific procedure for the imposition of fines or suspension of planned
32 community privileges or services is provided for in the declaration, a hearing shall be
33 held before an adjudicatory panel appointed by the executive board to determine if any
34 lot owner should be fined or if planned community privileges or services should be
35 suspended pursuant to the powers granted to the association in G.S. 47E-3-102(11)and
36 (12). If the executive board fails to appoint an adjudicatory panel to hear such matters,
37 hearings under this section shall be held before the executive board. The lot owner
38 charged shall be given notice of the charge, opportunity to be heard and to present
39 evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine
40 not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and
41 without further hearing, for each day after the decision that the violation occurs. Such
42 finances shall be assessments secured by liens under G.S. 47E-3-116. If it is decided that a
43 suspension of planned community privileges or services should be imposed, the

1 suspension may be continued without further hearing until the violation or delinquency is
2 cured.

3 **"§ 47E-3-108. Meetings.**

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

14 **"§ 47E-3-109. Quorums.**

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

19 (b) Unless the bylaws specify a larger percentage, a quorum is deemed present
20 throughout any meeting of the executive board if persons entitled to cast fifty percent
21 (50%) of the votes on that board are present at the beginning of the meeting.

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

30 **"§ 47E-3-110. Voting; proxies.**

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

39 (b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot
40 owner. If a lot is owned by more than one person, each owner of the lot may vote or
41 register protest to the casting of votes by the other owners of the lot through a duly
42 executed proxy. A lot owner may not revoke a proxy given pursuant to this section
43 except by actual notice of revocation to the person presiding over a meeting of the

1 association. A proxy is void if it is not dated. A proxy terminates 11 months after its
2 date, unless it specifies a shorter term.

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

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

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

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

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

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

22 **"§ 47E-3-111. Tort and contract liability.**

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

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

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

32 **"§ 47E-3-112. Conveyance or encumbrance of common elements.**

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

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

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

10 (d) No conveyance or encumbrance of common elements pursuant to this section
11 may deprive any lot of its rights of access and support.

12 **"§ 47E-3-113. Insurance.**

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

15 (1) Property insurance on the common elements insuring against all risks of
16 direct physical loss commonly insured against including fire and
17 extended coverage perils. The total amount of insurance after
18 application of any deductibles shall be not less than eighty percent
19 (80%) of the replacement cost of the insured property at the time the
20 insurance is purchased and at each renewal date, exclusive of land,
21 excavations, foundations, and other items normally excluded from
22 property policies; and

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

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

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

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

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

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

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

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

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

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

20 (g) Any portion of the planned community for which insurance is required under
21 subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or
22 replaced promptly by the association unless (i) the planned community is terminated, (ii)
23 repair or replacement would be illegal under any State or local health or safety statute or
24 ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote,
25 including one hundred percent (100%) approval of owners assigned to the limited
26 common elements not to be rebuilt. The cost of repair or replacement in excess of
27 insurance proceeds and reserves is a common expense. If any portion of the planned
28 community is not repaired or replaced, (i) the insurance proceeds attributable to the
29 damaged common elements shall be used to restore the damaged area to a condition
30 compatible with the remainder of the planned community, (ii) the insurance proceeds
31 attributable to limited common elements which are not rebuilt shall be distributed to the
32 owners of the lots to which those limited common elements were allocated, or to
33 lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be
34 distributed to all the lot owners or lienholders, as their interests may appear, in proportion
35 to the common expense liabilities of all the lots. Notwithstanding the provisions of this
36 subsection, G.S. 47E-2-118 (termination of the planned community) governs the
37 distribution of insurance proceeds if the planned community is terminated.

38 (h) The provisions of this section may be varied or waived in the case of a planned
39 community all of whose lots are restricted to nonresidential use.

40 **"§ 47E-3-114. Surplus funds.**

41 Unless otherwise provided in the declaration, any surplus funds of the association
42 remaining after payment of or provision for common expenses, the funding of a
43 reasonable operating expense surplus, and any prepayment of reserves shall be paid to the

1 lot owners in proportion to their common expense liabilities or credited to them to reduce
2 their future common expense assessments.

3 **"§ 47E-3-115. Assessments for common expenses.**

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

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

17 (c) To the extent required by the declaration:

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

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

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

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

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

32 (f) If common expense liabilities are reallocated, common expense assessments
33 and any installment thereof not yet due shall be recalculated in accordance with the
34 reallocated common expense liabilities.

35 **"§ 47E-3-116. Lien for assessments.**

36 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days
37 or longer shall constitute a lien on that lot when a claim of lien is filed of record in the
38 office of the clerk of superior court of the county in which the lot is located in the manner
39 provided herein. The association may foreclose the claim of lien in like manner as a
40 mortgage on real estate under power of sale under Article 2A of Chapter 45 of the
41 General Statutes. Unless the declaration otherwise provides, fees, charges, late charges,
42 finances, interest, and other charges imposed pursuant to G.S. 47E-3-102, 47E-3-107, 47E-3-
43 107A, and 47E-3-115 are enforceable as assessments under this section.

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

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

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

13 (e) A judgment, decree, or order in any action brought under this section shall
14 include costs and reasonable attorneys' fees for the prevailing party.

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

22 (g) A claim of lien shall set forth the name and address of the association, the
23 name of the record owner of the lot at the time the claim of lien is filed, a description of
24 the lot, and the amount of the lien claimed.

25 **"§ 47E-3-117. Reserved.**

26 **"§ 47E-3-118. Association records.**

27 (a) The association shall keep financial records sufficiently detailed to enable the
28 association to comply with this Chapter. All financial and other records shall be made
29 reasonably available for examination by any lot owner and the lot owner's authorized
30 agents.

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

36 **"§ 47E-3-119. Association as trustee.**

37 With respect to a third person dealing with the association in the association's capacity
38 as a trustee under G.S. 47E-2-118 following termination or G.S. 47E-3-113 for insurance
39 proceeds, the existence of trust powers and their proper exercise by the association may
40 be assumed without inquiry. A third person is not bound to inquire whether the
41 association has power to act as trustee or is properly exercising trust powers, and a third
42 person, without actual knowledge that the association is exceeding or improperly
43 exercising its powers, is fully protected in dealing with the association as if it possessed

1 and properly exercised the powers it purports to exercise. A third person is not bound to
2 assure the proper application of trust assets paid or delivered to the association in its
3 capacity as trustee.

4 **"§ 47E-3-120. Declaration limits on attorneys' fees.**

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

9 Section 2. The Revisor of Statutes shall cause to be printed with this act all
10 relevant portions of the official comments to the North Carolina Planned Community Act
11 and all explanatory comments of the drafters of this act, as the Revisor deems
12 appropriate.

13 Section 3. This act becomes effective January 1, 1999, and applies to planned
14 communities created on or after that date. G.S. 47E-3-102(1) through (6) and (11)
15 through (17), G.S. 47E-3-107(a),(b), and (c), G.S. 47E-3-115, and G.S. 47E-3-116 as
16 enacted by Section 1 of this act apply to planned communities created prior to the
17 effective date, except that the provisions of G.S. 47E-3-116(e) as enacted by Section 1 of
18 this act, apply to actions arising on or after the effective date.