

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

S

1

SENATE BILL 1167*

Short Title: Condo and Planned Comm. Clarifications.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

May 19, 2004

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THE LAWS ON THE POWERS OF CONDOMINIUM UNIT
OWNERS' ASSOCIATIONS AND PLANNED COMMUNITY OWNERS'
ASSOCIATIONS AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-1-102(a) reads as rewritten:

"(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-107.1 (Charges for Late Payment, Fines), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986; ~~but those 1986, unless the declaration expressly provides to the contrary. Those sections~~ apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums."

SECTION 2. G.S. 47C-3-102(a) reads as rewritten:

"(a) ~~Subject to the provisions of the declaration, Unless the declaration expressly provides to the contrary,~~ the association, even if unincorporated, may:

- (1) Adopt and amend bylaws and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

- 1 (3) Hire and terminate managing agents and other employees, agents, and
2 independent contractors;
- 3 (4) Institute, defend, or intervene in its own name in litigation or
4 administrative proceedings on matters affecting the condominium;
- 5 (5) Make contracts and incur liabilities;
- 6 (6) Regulate the use, maintenance, repair, replacement, and modification
7 of common elements;
- 8 (7) Cause additional improvements to be made as a part of the common
9 elements;
- 10 (8) Acquire, hold, encumber, and convey in its own name any right, title,
11 or interest to real or personal property, provided that common elements
12 may be conveyed or subjected to a security interest only pursuant to
13 G.S. 47C-3-112;
- 14 (9) Grant easements, leases, licenses, and concessions through or over the
15 common elements;
- 16 (10) Impose and receive any payments, fees, or charges for the use, rental,
17 or operation of the common elements other than limited common
18 elements described in subsections 47C-2-102(2) and (4) and for
19 services provided to unit owners;
- 20 (11) Impose charges for late payment of assessments and, after notice and
21 an opportunity to be heard, levy reasonable fines not to exceed one
22 hundred fifty dollars (\$150.00) (G.S. 47C-3-107.1) for violations of
23 the declaration, bylaws, and rules and regulations of the association;
- 24 (12) Impose reasonable charges for the preparation and recordation of
25 amendments to the declaration, resale certificates required by
26 G.S. 47C-4-109, or statements of unpaid assessments;
- 27 (13) Provide for the indemnification of and maintain liability insurance for
28 its officers, executive board, directors, employees and agents;
- 29 (14) Assign its right to future income, including the right to receive
30 common expense assessments, but only to the extent the declaration
31 expressly so provides;
- 32 (15) Exercise all other powers that may be exercised in this State by legal
33 entities of the same types as the association; and
- 34 (16) Exercise any other powers necessary and proper for the governance
35 and operation of the association."

36 **SECTION 3.** G.S. 47F-1-102(c) reads as rewritten:

37 "(c) Notwithstanding the provisions of subsection (a) of this section,
38 G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association),
39 G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and
40 assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and
41 G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this
42 State before January 1, ~~1999~~—1999, unless the articles of incorporation or the
43 declaration expressly provides to the contrary. These sections apply only with respect to
44 events and circumstances occurring on or after January 1, 1999, and do not invalidate

1 existing provisions of the declaration, bylaws, or plats and plans of those planned
2 communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities
3 created in this State before January 1, 1999, to the extent necessary in construing any of
4 the preceding sections."

5 **SECTION 4.** G.S. 47F-3-102 reads as rewritten:

6 **"§ 47F-3-102. Powers of owners' association.**

7 ~~Subject to the provisions of the articles of incorporation or the declaration and the~~
8 ~~declarant's rights therein,~~Unless the articles of incorporation or the declaration expressly
9 provides to the contrary, 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
16 proceedings on matters affecting the planned community;
- 17 (5) Make contracts and incur liabilities;
- 18 (6) Regulate the use, maintenance, repair, replacement, and modification
19 of 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,
23 or 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. 47F-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,
29 or 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
38 rights of access to lots) for reasonable periods for violations of the
39 declaration, 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
42 to the declaration or statements of unpaid assessments;
- 43 (14) Provide for the indemnification of and maintain liability insurance for
44 its officers, executive board, directors, employees, and agents;

- 1 (15) Assign its right to future income, including the right to receive
2 common expense assessments;
3 (16) Exercise all other powers that may be exercised in this State by legal
4 entities of the same type as the association; and
5 (17) Exercise any other powers necessary and proper for the governance
6 and operation of the association."

7 **SECTION 5.** This act is effective when it becomes law.