

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-109
SENATE BILL 1167**

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, TO PERMIT ELECTRONIC NOTICES OF OWNERS' ASSOCIATION MEETINGS, TO AMEND THE SECRET PEEPING STATUTE, AND TO MAKE CONFORMING CHANGES.

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;
- (3) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;

- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;
- (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred fifty dollars (\$150.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by G.S. 47C-4-109, or statements of unpaid assessments;
- (13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
- (14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
- (15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and
- (16) Exercise any other powers necessary and proper for the governance and operation of the association."

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

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F 3 102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this State before January 1, 1999.—1999, unless the articles of incorporation or the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

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

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

~~Subject to the provisions of the articles of incorporation or the declaration and the declarant's rights therein,~~ Unless the articles of incorporation or the declaration expressly provides to the contrary, the association 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 lot owners;
- (3) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements

- may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
 - (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;
 - (11) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;
 - (12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;
 - (13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;
 - (14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;
 - (15) Assign its right to future income, including the right to receive common expense assessments;
 - (16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
 - (17) Exercise any other powers necessary and proper for the governance and operation of the association."

SECTION 5. G.S. 47C-3-108 reads as rewritten:

"§ 47C-3-108. Meetings.

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit ~~owner-owner~~, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer."

SECTION 6. G.S. 47F-3-108 reads as rewritten:

"§ 47F-3-108. Meetings.

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

SECTION 7. G.S. 14-202 reads as rewritten:

"§ 14-202. Secretly peeping into room occupied by another person.

(a) Any person who shall peep secretly into any room occupied by another person shall be guilty of a Class 1 misdemeanor.

(a1) Unless covered by another provision of law providing greater punishment, any person who secretly or surreptitiously peeps underneath or through the clothing being worn by another person, through the use of a mirror or other device, for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section:

(1) The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual.

(2) The term "room" shall include, but is not limited to, a bedroom, a rest room, a bathroom, a shower, and a dressing room.

(c) Unless covered by another provision of law providing greater punishment, any person who, while in possession of any device which may be used to create a photographic image, shall secretly peep into any room shall be guilty of a Class A1 misdemeanor.

(d) Unless covered by another provision of law providing greater punishment, any person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room for the purpose of arousing or gratifying the sexual desire of any person shall be guilty of a Class I felony.

(e) Any person who secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a Class I felony.

(f) Any person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent shall be guilty of a Class I felony.

(g) Any person who knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section shall be guilty of a Class I felony.

(h) Any person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this section shall be guilty of a Class H felony if the dissemination is without the consent of the person in the photographic image.

(i) A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

(j) If the defendant is placed on probation as a result of violation of this section:

(1) For a first conviction under this section, the judge may impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(2) For a second or subsequent conviction under this section, the judge shall impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(k) Any person whose image is captured or disseminated in violation of this section has a civil cause of action against any person who captured or disseminated the image or procured any other person to capture or disseminate the image and is entitled

to recover from those persons actual damages, punitive damages, reasonable attorneys' fees and other litigation costs reasonably incurred.

(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted of a second or subsequent violation of subsection ~~(a)~~(a), (a1), or (c) of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

(m) The provisions of subsections (a), (a1), (c), (e), (g), (h), and (k) of this section do not apply to:

- (1) Law enforcement officers while discharging or attempting to discharge their official duties; or
- (2) Personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility.

(n) This section does not affect the legal activities of those who are licensed pursuant to Chapter 74C, Private Protective Services, or Chapter 74D, Alarm Systems, of the General Statutes, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in this section."

SECTION 8. G.S. 14-208.6(4) reads as rewritten:

"(4) "Reportable conviction" means:

- a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.
- b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.
- c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.
- d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of ~~G.S. 14-202(a)~~G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register."

SECTION 9. Sections 7 and 8 of this act become effective December 1, 2004, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:10 p.m. this 17th day of July, 2004