

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 330  
Committee Substitute Favorable 5/2/13  
Senate Judiciary I Committee Substitute Adopted 6/26/14

Short Title: Planned Community Act/Declarant Rights.

(Public)

Sponsors:

Referred to:

March 19, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE NORTH CAROLINA PLANNED COMMUNITY ACT  
3 REGARDING THE TRANSFER OF SPECIAL DECLARANT RIGHTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 47F-1-102 reads as rewritten:

6 "§ 47F-1-102. Applicability.

7 ...  
8 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104  
9 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws),  
10 G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through  
11 (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive board members and  
12 officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community; responsibility and  
13 assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned  
14 community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments  
15 for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association  
16 records), and G.S. 47F-3-121 (American and State flags and political sign ~~displays~~displays),  
17 and G.S. 47F-3-104 (Transfer of Special Declarant Rights) apply to all planned communities  
18 created in this State before January 1, 1999, unless the articles of incorporation or the  
19 declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on  
20 attorneys' fees) applies to all planned communities created in this State before January 1, 1999.  
21 These sections apply only with respect to events and circumstances occurring on or after  
22 January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats  
23 and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all  
24 planned communities created in this State before January 1, 1999, to the extent necessary in  
25 construing any of the preceding sections.

26 ...."  
27 SECTION 2. G.S. 47F-1-103 reads as rewritten:

28 "§ 47F-1-103. Definitions.

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

31 (1) "Affiliate of declarant" means any person who succeeds to any special  
32 declarant rights and who controls, is controlled by, or is under common  
33 control with a declarant. A person "controls" a declarant if the person is any  
34 of the following:

35 a. A general partner, officer, director, or employer of the declarant.



b. Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the declarant.

c. Controls in any manner the election of a majority of the directors of the declarant.

d. Has contributed more than twenty percent (20%) of the capital of the declarant.

A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised.

...  
(11) "Development rights" means any right or combination of rights reserved by a declarant in the declaration (i) to add real estate to a planned community; (ii) to create lots, common elements, or limited common elements within a planned community; (iii) to subdivide or combine lots or convert lots into common elements; or (iv) to withdraw real estate from a planned community.

...."

**SECTION 3.** G.S. 47F-3-104 reads as rewritten:

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

(a) ~~Except for transfer of declarant rights pursuant to foreclosure, no~~ 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. ~~The~~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

1 declarant right by a successor declarant who is not an affiliate of the  
2 transferor.

3 (c) Unless otherwise provided in a mortgage instrument, deed of trust, or other  
4 agreement creating a security interest, in case of foreclosure of a security interest, sale by a  
5 trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under  
6 Bankruptcy Code or receivership proceedings of any lots owned by a declarant, or real estate in  
7 a planned community subject to development rights, or real estate subject to development rights  
8 for a planned community, a person acquiring title to all the property being foreclosed or sold,  
9 but only upon the person's request in an instrument recorded in every county in which any  
10 portion of the planned community is located, succeeds to all special declarant rights  
11 (G.S. 47F-1-103(28)) related to that property held by that declarant and requested by the person  
12 acquiring title. The judgment or instrument conveying title shall provide for transfer of only the  
13 special declarant rights requested. The mortgage, deed of trust, tax lien, or other conveyance to  
14 be foreclosed under this subsection shall not be required to contain specific reference to an  
15 assignment of special declarant rights but shall be deemed to include the special declarant  
16 rights as part of the right, title, and interest encumbered by the mortgage, deed of trust, tax lien,  
17 or other conveyance.

18 (d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating  
19 a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership  
20 proceedings of all interests in a planned community owned by a declarant, the declarant ceases  
21 to have any special declarant rights and the period of declarant control (G.S. 47F-3-103(d))  
22 terminates unless either of the following applies:

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

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

28 (e) The liabilities and obligations of a person who succeeds to special declarant rights  
29 are as follows:

30 (1) A successor to any special declarant right who is an affiliate of a declarant is  
31 subject to all obligations and liabilities imposed on the transferor by this  
32 Chapter or by the declaration.

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

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

44 b. On his or her transferor, other than:

45 1. Misrepresentations by the transferor or any previous  
46 declarant;

47 2. Warranty obligations on improvements made by the  
48 transferor or any previous declarant or made before the  
49 planned community was created;

- 1                                    3.     Obligations and liabilities arising out of contractual  
2                                    agreements between the transferor or any previous declarant  
3                                    and third parties other than the declaration;  
4                                    4.     Breach of any fiduciary obligation by the transferor or any  
5                                    previous declarant or his or her appointees to the executive  
6                                    board; or  
7                                    5.     Any liability or obligation imposed on the transferor or any  
8                                    previous declarant as a result of the transferor's acts or  
9                                    omissions after the transfer.
- 10                    (3)     A successor to only a right reserved in the declaration to maintain sales  
11                    offices, management offices, signs advertising the planned community, and  
12                    models, if the successor is not an affiliate of the declarant, may not exercise  
13                    any other special declarant right and is not subject to any liability or  
14                    obligation as a declarant.
- 15                    (4)     A successor to all special declarant rights held by a transferor who is not an  
16                    affiliate of the declarant who succeeded to those rights pursuant to a deed or  
17                    other instrument of conveyance in lieu of foreclosure or a judgment or  
18                    instrument conveying title under subsection (c) of this section may declare in  
19                    a recorded instrument the intention to hold those rights solely for transfer to  
20                    another person. Thereafter, until transferring all special declarant rights to  
21                    any person acquiring title to any lot or real estate subject to development  
22                    rights owned by the successor, or until recording an instrument permitting  
23                    exercise of all those rights, that successor may not exercise any of those  
24                    rights other than any right held by his or her transferor to control the  
25                    executive board in accordance with G.S. 47F-3-103(d) for the duration of  
26                    any period of declarant control, and any attempted exercise of those rights is  
27                    void. So long as a successor declarant does not have the right to exercise  
28                    special declarant rights under this subsection, the successor declarant is not  
29                    subject to any liability or obligation as a declarant other than liability for his  
30                    or her acts and omissions under G.S. 47F-3-103(d).
- 31                    (f)     Nothing in this section subjects any successor to a special declarant right to any  
32                    claims against or other obligations of a transferor declarant other than claims and obligations  
33                    expressly arising under this Chapter or the declaration.
- 34                    (g)     For purposes of this section, "assignment of declarant rights" shall include any  
35                    assignment by the declarant of special declarant rights to a person, including, without  
36                    limitation, an assignment pursuant to this section."
- 37                    **SECTION 4.** This act is effective when it becomes law. Nothing in this act shall be  
38                    construed as being applicable to or affecting any pending litigation, except that the last  
39                    sentence of G.S. 47F-3-104(c) shall be applicable to any mortgage, deed of trust, tax lien, or  
40                    other conveyance providing for foreclosure recorded on or after January 1, 1999.