

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 793

Short Title: HOAs/Fidelity Bonds. (Public)

Sponsors: Representatives Saine and R. Moore (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

April 11, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT CERTAIN CONDOMINIUM AND PLANNED
COMMUNITY ASSOCIATIONS SHALL OBTAIN AND MAINTAIN A FIDELITY
BOND INSURING THE ASSOCIATIONS FROM LOSSES RESULTING FROM THEFT
OR DISHONESTY COMMITTED BY MEMBERS OF THE EXECUTIVE BOARD OR
PERSONS EMPLOYED BY THE ASSOCIATIONS AND PROVIDING THAT ANY
MANAGEMENT AGENT OR COMPANY HIRED BY AN ASSOCIATION SHALL AT
ALL TIMES BE COVERED BY A FIDELITY BOND.

The General Assembly of North Carolina enacts:

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

"§ 47C-1-102. Applicability.

(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-3-103 (Executive board members and officers), 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-113.1 (Fidelity bond required; executive board; management company), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-118.1 (Financial audit requirements), 47C-3-121 (American and State flags and political sign displays), ~~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, 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. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read as follows:

"§ 47C-3-113.1. Fidelity bond required; executive board; management company.

(a) Executive Board. – Any unit owners' association with annual assessments for common expenses of one hundred thousand dollars (\$100,000) or more shall obtain and maintain a fidelity bond insuring the unit owners' association against losses resulting from theft



1 or dishonesty committed by the officers and members of the executive board or persons
2 employed by the unit owners' association. The bond shall provide coverage in the amount of
3 one million dollars (\$1,000,000). The executive board shall obtain the bond on behalf of the
4 unit owners' association.

5 (b) Management Agent or Company. – Any management agent or company hired by a
6 unit owners' association shall at all times be covered by a fidelity bond. For purposes of this
7 section, a management agent or company is any person who, for compensation or the
8 expectation thereof, performs two or more of the following: (i) acts with the authority of a unit
9 owners' association in its business, legal, financial, or other transactions with association
10 members and nonmembers; (ii) executes the resolutions and decisions of the government of a
11 unit owners' association or, with the authority of the association, enforces the rights of the
12 association secured by statute, contract, covenant, rule, or bylaw; (iii) collects, disburses, or
13 otherwise exercises dominion or control over money or other property belonging to a unit
14 owners' association; (iv) prepares budgets, financial statements, or other financial reports for a
15 unit owners' association; (v) negotiates contracts or otherwise coordinates or arranges for
16 services or the purchase of property and goods for or on behalf of a unit owners' association; or
17 (vi) offers or solicits to perform any of the acts or services in subdivisions (i) through (v) of this
18 subsection on behalf of a unit owners' association. The fidelity bond shall provide coverage in
19 an amount of one million dollars (\$1,000,000) or more and shall comply with the following
20 conditions:

- 21 (1) Be written by an insurance company authorized to write fidelity bonds in
22 this State.
- 23 (2) Cover the unit owners' association manager and all or a portion of the
24 employees and protect all or a portion of the association funds in the custody
25 of the association manager or association employees acting under the
26 association manager's supervision.
- 27 (3) Provide that the insurance company issuing the bond may not cancel,
28 substantially modify, or refuse to renew the bond without giving 30 days'
29 prior written notice to the executive board, except in the case of nonpayment
30 of premiums, in which case 10 days' prior written notice shall be given to the
31 executive board.
- 32 (4) Contain any other provisions as may be required by the executive board."

33 **SECTION 3.** Article 3 of Chapter 47C of the General Statutes is amended by
34 adding a new section to read as follows:

35 **"§ 47C-3-118.1. Financial audit requirements.**

36 The executive board shall provide for an annual independent financial audit of the
37 association if the unit owners' association has annual assessments for common expenses of two
38 hundred fifty thousand dollars (\$250,000) or more. The audit shall be completed no later than
39 one year after the end of the association's fiscal year and shall be made available upon request
40 to the unit owners within 30 days after its completion."

41 **SECTION 4.** G.S. 47F-1-102 reads as rewritten:

42 **"§ 47F-1-102. Applicability.**

43 ...

44 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1)
45 through (6) and (11) through (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive
46 board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community;
47 responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and
48 suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings),
49 G.S. 47F-3-113.1 (Fidelity bond required; executive board; management company),
50 G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments),
51 G.S. 47F-3-118 (Association records), G.S. 47F-3-118.1 (Financial audit requirements), and

1 G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned
2 communities created in this State before January 1, 1999, unless the articles of incorporation or
3 the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on
4 attorneys' fees) applies to all planned communities created in this State before January 1, 1999.
5 These sections apply only with respect to events and circumstances occurring on or after
6 January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats
7 and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all
8 planned communities created in this State before January 1, 1999, to the extent necessary in
9 construing any of the preceding sections.

10"

11 **SECTION 5.** Article 3 of Chapter 47F of the General Statutes is amended by
12 adding a new section to read as follows:

13 **"§ 47F-3-113.1. Fidelity bond required; executive board; management company.**

14 (a) Executive Board. – Any association with annual assessments for common expenses
15 of one hundred thousand dollars (\$100,000) or more shall obtain and maintain a fidelity bond
16 insuring the association against losses resulting from theft or dishonesty committed by the
17 officers and members of the executive board or persons employed by the association. The bond
18 shall provide coverage in the amount of one million dollars (\$1,000,000). The executive board
19 shall obtain the bond on behalf of the association.

20 (b) Management Agent or Company. – Any management agent or company hired by an
21 association shall at all times be covered by a fidelity bond. For purposes of this section, a
22 management agent or company is any person who, for compensation or the expectation thereof,
23 performs two or more of the following: (i) acts with the authority of an association in its
24 business, legal, financial, or other transactions with association members and nonmembers; (ii)
25 executes the resolutions and decisions of the government of an association or, with the
26 authority of the association, enforces the rights of the association secured by statute, contract,
27 covenant, rule, or bylaw; (iii) collects, disburses, or otherwise exercises dominion or control
28 over money or other property belonging to an association; (iv) prepares budgets, financial
29 statements, or other financial reports for an association; (v) negotiates contracts or otherwise
30 coordinates or arranges for services or the purchase of property and goods for or on behalf of
31 an association; or (vi) offers or solicits to perform any of the acts or services in subdivisions (i)
32 through (v) of this subsection on behalf of an association. The bond shall provide coverage in
33 an amount of one million dollars (\$1,000,000) or more and shall comply with the following
34 conditions:

- 35 (1) Be written by an insurance company authorized to write fidelity bonds in
36 this State.
- 37 (2) Cover the association manager and all or a portion of the employees and
38 protect all or a portion of the association funds in the custody of the
39 association manager or association employees acting under the association
40 manager's supervision.
- 41 (3) Provide that the insurance company issuing the bond may not cancel,
42 substantially modify, or refuse to renew the bond without giving 30 days'
43 prior written notice to the executive board, except in the case of nonpayment
44 of premiums, in which case 10 days' prior written notice shall be given to the
45 executive board.
- 46 (4) Contain any other provisions as may be required by the executive board."

47 **SECTION 6.** Article 3 of Chapter 47F of the General Statutes is amended by
48 adding a new section to read as follows:

49 **"§ 47F-3-118.1. Financial audit requirements.**

50 The executive board shall provide for an annual independent financial audit of the
51 association if the association has annual assessments for common expenses of two hundred

1 fifty thousand dollars (\$250,000) or more. The audit shall be completed no later than one year
2 after the end of the association's fiscal year and shall be made available upon request to the lot
3 owners within 30 days after its completion."

4 **SECTION 7.** This act becomes effective July 1, 2013.