



# SENATE BILL 336: Condo Act/Restitut'n/Market.Title Act Changes.

2021-2022 General Assembly

<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	October 19, 2021
<b>Introduced by:</b>	Sen. Daniel	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	Second Edition		Staff Attorney

## OVERVIEW: Senate Bill 336 would:

- *Require certain information to be included in a condominium declaration before recordation (Section 1)*
- *Clarify the applicability of certain provisions of the Condominium Act to condominiums created on or before October 1, 1986 (Section 2)*
- *Require persons convicted of first-, second-, or third-degree sexual exploitation of a minor to make restitution to the victim, unless the victim has not been identified (Section 3)*
- *Exempt from the Marketable Title Act provisions contained in a declaration applicable to certain condominium, cooperatives, and planned communities (Section 4)*

## BILL ANALYSIS:

### Part I – Information Required to Be Included in a Condominium Declaration before Recordation

**Section 1.(a)** would provide that a condominium unit not specifically described by an upper limiting boundary referring to established datum is deemed to include so much of the land and air above the unit as would be included for a noncondominium parcel of land under applicable common or statutory law, and that a condominium unit not specifically described by a lower limiting elevation boundary with reference to established datum is deemed to include so much of the land and air below the unit as would be included for a noncondominium parcel of land under applicable common or statutory law.

**Section 1.(b)** would provide that a declaration or amendment to a declaration adding units to a condominium may not be recorded unless there is a recorded certificate of an architect or engineer attesting that all structural components and mechanical systems of all buildings containing or comprising the new units are substantially completed in accordance with a licensed architect's or registered engineer's building design plans. The plats or plans for the condominium required to be filed by the declarant with the register of deeds would not be required to depict the structural components and mechanical systems of buildings.

Section 1 would apply to declarations recorded on or after the effective date of this act.

### Part II – Condominium Act Provisions Applicable to Condominiums Created on or before October 1, 1986

Chapter 47C of the General Statutes, the North Carolina Condominium Act, applies to all condominiums created in this State after October 1, 1986. In addition, provisions of the Act enumerated in G.S. 47C-1-102(a) apply to condominiums created on or before October 1, 1986, unless the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring

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after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

**Section 2** would provide that the sections of the Condominium Act enumerated in G.S. 47C-1-102(a) apply to condominiums created on or before October 1, 1986, notwithstanding any contrary provisions in the condominium declaration, bylaws, or articles of incorporation, and notwithstanding any references in those documents to Chapter 47A. The amendment would also repeal the current statutory language providing that these sections do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

## **Part III – Restitution for Sexual Exploitation of a Minor**

Article 81C of Chapter 15A of the General Statutes governs restitution. When sentencing a defendant convicted of a criminal offense, the court must determine whether the defendant must be ordered to make restitution to any victim (a person directly and proximately harmed as a result of the defendant's commission of the criminal offense). The court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense. G.S. 15A-1340.34.

In determining the amount of restitution, the court must consider the following:

- For an offense resulting in bodily injury to a victim, all of the following must be considered:
  - The cost of necessary medical and related professional services and equipment relating to physical, psychiatric, and psychological care required by the victim.
  - The cost of necessary physical and occupational therapy and rehabilitation for the victim.
  - Income lost by the victim as a result of the offense.
- For an offense resulting in the damage, loss, or destruction of property of a victim:
  - Return of the property to the owner or someone designated by the owner; or
  - If return of the property is impossible or inadequate:
    - The value of the property on the date of the damage, loss, or destruction; or
    - The value of the property on the date of sentencing, less the value of any part of the property that is returned.
- Any measure of restitution specifically provided by law for the offense committed.
- In the case of an offense resulting in bodily injury that results in the death of the victim, the cost of the victim's necessary funeral and related services. G.S. 15A-1340.35(a)(1)-(4).

The court may require the victim to provide admissible evidence that documents the costs claimed. G.S. 15A-1340.35(b). The court also must consider the resources of the defendant and may order partial restitution if the loss caused by the offense is greater than what defendant is able to pay. G.S. 15A-1340.36(a).

**Section 3** would provide that in addition to any other civil or criminal penalty, the court must order restitution for a violation of first-degree, second-degree, or third-degree sexual exploitation of a minor, unless the victim has not been identified.

Any defendant who viewed child pornography and was convicted of first-degree, second-degree, or third-degree sexual exploitation of a minor would be ordered to make restitution.

The court would be required to determine the "full amount of the victim's losses" for costs incurred as a proximate result of the offense, to include the following:

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- Medical services relating to physical, psychiatric, or psychological care.
- Physical and occupational therapy or rehabilitation.
- Transportation, temporary housing, and childcare expenses.
- Loss of income.
- Reasonable attorneys' fees and litigation costs associated with restitution or its enforcement.
- Any other relevant losses incurred by the victim.

If more than one defendant contributed to the losses of the victim, the court would be required to apportion liability among the defendants according to each defendant's level of contribution to the victim's losses. A victim's total aggregate recovery could not exceed the full amount of the victim's losses. A defendant could petition the court to amend a restitution order upon a showing that the victim has received restitution for the full amount of the victim's losses.

If it is impossible to trace a particular amount of the losses to the defendant, the court would have to use its discretion to order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's full amount of loss. The victim may be required to show the amount of restitution has been paid in other cases for the same losses.

Section 3 would become effective December 1, 2021, and would apply to orders for restitution entered on or after that date.

## **Part IV – Marketable Title Act Exemption for Condominiums, Cooperatives and Planned Communities**

Under the Marketable Title Act, Chapter 47B of the General Statutes, if a person claims title to real property under a chain of record title for 30 years, and no other person has filed a notice of any claim of interest in the real property during the 30-year period, then all conflicting claims based upon any title transaction prior to the 30-year period are extinguished, except for claims subject to one of the exemptions set forth in G.S. 47B-3.

G.S. 47B-3(13) exempts the following from extinguishment by operation of the Marketable Title Act:

"Covenants applicable to a general or uniform scheme of development which restrict the property to residential use only, provided said covenants are otherwise enforceable. The excepted covenant may restrict the property to multi-family or single-family residential use or simply to residential use. Restrictive covenants other than those mentioned herein which limit the property to residential use only are not excepted from the provisions of Chapter 47B."

Other than covenants exempted by G.S. 47B-3(13), there currently is no exemption for rights arising specifically under declarations applicable to condominiums, cooperatives, and planned communities.

**Section 4** would enact new subdivision G.S. 47B-3(14), to provide an exemption from the Marketable Title Act for provisions contained in a declaration of covenants applicable to any of the following:

1. A condominium created under Chapter 47A or Chapter 47C;
2. A cooperative as defined in Chapter 47F;<sup>1</sup> or
3. A planned community, other than one in which all lots are restricted to nonresidential purposes, whenever created, to which any provisions in Chapter 47F apply; provided that

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<sup>1</sup> G.S. 47F-1-103(8) defines "cooperative" to mean "real estate owned by a corporation, trust, trustee, partnership, or unincorporated association, where the governing instruments of that organization provide that each of the organization's members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate."

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this exemption would not apply to a planned community created before January 1, 1999, unless it is governed by an owners' association in existence as of November 1, 2021.

Section 4 would become effective November 1, 2021.

**EFFECTIVE DATE:** Except as otherwise provided, this act would become effective when it becomes law.

*Brad Krehely, Co-counsel to House Judiciary 1, substantially contributed to this summary.*