



HOUSE BILL 330: Planned Community Act/Declarant Rights

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Reps. Bryan, Stam
Analysis of: PCS to Second Edition
H330-CSSA-68

Date: June 26, 2014
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SUMMARY: *House Bill 330 amends the North Carolina Planned Community Act with respect to the transfer of special declarant rights.*

CURRENT LAW: Chapter 47F of the General Statutes is the North Carolina Planned Community Act. It is based, in part, on provisions of the Uniform Planned Community Act.

BILL ANALYSIS: The act specifies that G.S.47F-3-104 (Transfer of Special Declarant Rights) applies to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary.

It adds definitions for "Affiliate of declarant" and "Development Rights."

It provides that upon transfer of any special declarant right, the liability of a transferor declarant is:

- A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor.
- If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor.
- 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.
- A transferor has no liability for any act or omission or any breach of a contract arising from the exercise of a special declarant right by a successor declarant who is not an affiliate.

It provides that unless otherwise provided in a mortgage instrument or other agreement creating a security instrument, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of any lots owned by a declarant, or real estate in a planned community subject to development rights, or real estate subject to development rights for a planned community, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request in an instrument recorded in every county in which any portion of the planned community is located, succeeds to all special declarant rights related to that property held by that declarant and requested by the person acquiring title.

Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of all interests in a planned community owned by a declarant, including all described real property subject to development rights, the declarant ceases to have any special declarant rights and the period of declarant control terminates unless either of the following applies:

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- The judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.
- The declarant transferred special declarant rights related to the appointment of executive board members to another person pursuant to this section prior to the foreclosure or sale.

The act provides for the liabilities and obligations of a person who succeeds to special declarant rights:

- A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor.
- Unless otherwise specified in the declaration as to the holder of a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, a successor to any special declarant right who is not an affiliate of a declarant is subject to the obligations and liabilities expressly imposed by this Chapter or the declaration (1) on a declarant which relate to the successor's exercise or nonexercise of special declarant rights (2) or on his transferor, other than: (a) misrepresentations by the transferor or any previous declarant, (b) warranty obligations on improvements made by the transferor or any previous declarant or made before the planned community was created, (c) obligations and liabilities arising out of contractual agreements between the transferor or any previous declarant and third parties other than the declaration, (d) breach of any fiduciary obligation by the transferor or any previous declarant or his appointees to the executive board, or (e) any liability imposed on the transferor or any previous declarant as a result of the transferor's acts or omissions after the transfer.
- A successor to only a right reserved in the declaration to maintain sales offices, management offices, signs advertising the planned community, and models, if the successor is not an affiliate, may not exercise any other special declarant right and is not subject to liability as a declarant.
- A successor to all special declarant rights held by a transferor who is not an affiliate of the declarant who succeeded to those rights may declare the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any lot or real estate subject to development rights or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant does not have the right to exercise special declarant rights under this subsection, the successor declarant is not subject to any liability other than liability for his acts and omissions.

EFFECTIVE DATE: The act is effective when it becomes law. The act does not affect pending litigation except that the last sentence of G.S. 47F-3-104(c) is applicable to any mortgage, deed of trust, tax lien, or other conveyance providing for foreclosure recorded on or after January 1, 1999.

BACKGROUND: House Bill 330 was recommended by the North Carolina Bar Association.