

Chapter 47F.
North Carolina Planned Community Act.
Article 1.
General Provisions.

§ 47F-1-101. Short title.

This Chapter shall be known and may be cited as the North Carolina Planned Community Act. (1998-199, s. 1.)

§ 47F-1-102. Applicability.

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(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-3-103(f)(Executive board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47F-3-121 (American and State flags and political sign displays) apply 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, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. 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.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State. (1998-199, s. 1; 2002-112, s. 2; 2004-109, s. 3; 2005-214, s. 1; 2005-422, s. 9; 2006-226, s. 15(a).)

§ 47F-1-103. Definitions.

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

- 1 (1) Reserved.
- 2 (2) "Allocated interests" means the common expense liability and votes in the
3 association allocated to each lot.
- 4 (3) "Association" or "owners' association" means the association organized as
5 allowed under North Carolina law, including G.S. 47F-3-101.
- 6 (4) "Common elements" means any real estate within a planned community
7 owned or leased by the association, other than a lot.
- 8 (5) "Common expenses" means expenditures made by or financial liabilities of
9 the association, together with any allocations to reserves.
- 10 (6) "Common expense liability" means the liability for common expenses
11 allocated to each lot as permitted by this Chapter, the declaration or
12 otherwise by law.
- 13 (7) "Condominium" means real estate, as defined and created under Chapter
14 47C [of the General Statutes].
- 15 (8) "Cooperative" means real estate owned by a corporation, trust, trustee,
16 partnership, or unincorporated association, where the governing instruments
17 of that organization provide that each of the organization's members,
18 partners, stockholders, or beneficiaries is entitled to exclusive occupancy of
19 a designated portion of that real estate.
- 20 (9) "Declarant" means any person or group of persons acting in concert who (i)
21 as part of a common promotional plan, offers to dispose of the person's or
22 group's interest in a lot not previously disposed of, or (ii) reserves or
23 succeeds to any special declarant right.
- 24 (10) "Declaration" means any instruments, however denominated, that create a
25 planned community and any amendments to those instruments.
- 26 (11), (12) Reserved.
- 27 (13) "Executive board" means the body, regardless of name, designated in the
28 declaration to act on behalf of the association.
- 29 (14), (15) Reserved.
- 30 (16) "Leasehold planned community" means a planned community in which all
31 or a portion of the real estate is subject to a lease, the expiration or
32 termination of which will terminate the planned community or reduce its
33 size.
- 34 (17) "Lessee" means the party entitled to present possession of a leased lot
35 whether lessee, sublessee, or assignee.
- 36 (18) "Limited common element" means a portion of the common elements
37 allocated by the declaration or by operation of law for the exclusive use of
38 one or more but fewer than all of the lots.
- 39 (19) "Lot" means a physical portion of the planned community designated for
40 separate ownership or occupancy by a lot owner.
- 41 (20) "Lot owner" means a declarant or other person who owns a lot, or a lessee of
42 a lot in a leasehold planned community whose lease expires simultaneously
43 with any lease the expiration or termination of which will remove the lot
44 from the planned community, but does not include a person having an
45 interest in a lot solely as security for an obligation.
- 46 (21) "Master association" means an organization described in G.S. 47F-2-120,
47 whether or not it is also an association described in G.S. 47F-3-101.
- 48 (22) "Person" means a natural person, corporation, business trust, estate, trust,
49 partnership, association, joint venture, government, governmental
50 subdivision or agency, or other legal or commercial entity.

- 1 (23) "Planned community" means real estate with respect to which any person, by
2 virtue of that person's ownership of a lot, is expressly obligated by a
3 declaration to pay real property taxes, insurance premiums, or other
4 expenses to maintain, improve, or benefit other lots or other real estate
5 described in the declaration. For purposes of this act, neither a cooperative
6 nor a condominium is a planned community, but real estate comprising a
7 condominium or cooperative may be part of a planned community.
8 "Ownership of a lot" does not include holding a leasehold interest of less than
9 [than] 20 years in a lot, including renewal options.
- 10 (24) "Purchaser" means any person, other than a declarant or a person in the
11 business of selling real estate for the purchaser's own account, who by means
12 of a voluntary transfer acquires a legal or equitable interest in a lot, other
13 than (i) a leasehold interest (including renewal options) of less than 20 years,
14 or (ii) as security for an obligation.
- 15 (25) "Real estate" means any leasehold or other estate or interest in, over, or
16 under land, including structures, fixtures, and other improvements and
17 interests which by custom, usage, or law pass with a conveyance of land
18 though not described in the contract of sale or instrument of conveyance.
19 "Real estate" includes parcels with or without upper or lower boundaries,
20 and spaces that may be filled with air or water.
- 21 (26) "Reasonable attorneys' fees" means attorneys' fees reasonably incurred
22 without regard to any limitations on attorneys' fees which otherwise may be
23 allowed by law.
- 24 (27) Reserved.
- 25 (28) "Special declarant rights" means rights reserved for the benefit of a declarant
26 including, without limitation, any right (i) to complete improvements
27 indicated on plats and plans filed with the declaration; (ii) to exercise any
28 development right; (iii) to maintain sales offices, management offices, signs
29 advertising the planned community, and models; (iv) to use easements
30 through the common elements for the purpose of making improvements
31 within the planned community or within real estate which may be added to
32 the planned community; (v) to make the planned community part of a larger
33 planned community or group of planned communities; (vi) to make the
34 planned community subject to a master association; or (vii) to appoint or
35 remove any officer or executive board member of the association or any
36 master association during any period of declarant control.
- 37 (29) Reserved. (1998-199, s. 1.)

38
39 **§ 47F-1-104. Variation.**

40 (a) Except as specifically provided in specific sections of this Chapter, the provisions of
41 this Chapter may not be varied by the declaration or bylaws.

42 (b) The provisions of this Chapter may not be varied by agreement; however, after
43 breach of a provision of this Chapter, rights created hereunder may be knowingly waived in
44 writing.

45 (c) Notwithstanding any of the provisions of this Chapter, a declarant may not act under
46 a power of attorney or proxy or use any other device to evade the limitations or prohibitions of
47 this Chapter, the declaration, or the bylaws. (1998-199, s. 1.)

48
49 **§ 47F-1-105. Reserved for future codification purposes.**

50
51 **§ 47F-1-106. Applicability of local ordinances, regulations, and building codes.**

1 A zoning, subdivision, or building code or other real estate use law, ordinance, or regulation
2 may not prohibit a planned community or impose any requirement upon a planned community
3 which it would not impose upon a substantially similar development under a different form of
4 ownership or administration. Otherwise, no provision of this Chapter invalidates or modifies
5 any provision of any zoning, subdivision, or building code or any other real estate use law,
6 ordinance, or regulation. No local ordinance or regulation may require the recordation of a
7 declaration prior to the date required by this Chapter. (1998-199, s. 1.)
8

9 **§ 47F-1-107. Eminent domain.**

10 (a) If a lot is acquired by eminent domain, or if part of a lot is acquired by eminent
11 domain leaving the lot owner with a remnant which may not practically or lawfully be used for
12 any purpose permitted by the declaration, the award shall compensate the lot owner for his lot
13 and its interest in the common element. Upon acquisition, unless the decree otherwise provides,
14 the lot's allocated interests are automatically reallocated to the remaining lots in proportion to
15 the respective allocated interests of those lots before the taking, exclusive of the lot taken.

16 (b) Except as provided in subsection (a) of this section, if part of a lot is acquired by
17 eminent domain, the award shall compensate the lot owner for the reduction in value of the lot.
18 Upon acquisition, unless the decree otherwise provides, (i) that lot's allocated interests are
19 reduced in proportion to the reduction in the size of the lot, or on any other basis specified in
20 the declaration, and (ii) the portion of the allocated interests divested from the partially
21 acquired lot are automatically reallocated to that lot and the remaining lots in proportion to the
22 respective allocated interests of those lots before the taking, with the partially acquired lot
23 participating in the reallocation on the basis of its reduced allocated interests.

24 (c) If there is any reallocation under subsection (a) or (b) of this section, the association
25 shall promptly prepare, execute, and record an amendment to the declaration reflecting the
26 reallocations. Any remnant of a lot remaining after part of a lot is taken under this subsection is
27 thereafter a common element.

28 (d) If part of the common elements is acquired by eminent domain, the portion of the
29 award attributable to the common elements taken shall be paid to the association. Unless the
30 declaration provides otherwise, any portion of the award attributable to the acquisition of a
31 limited common element shall be apportioned among the owners of the lots to which that
32 limited common element was allocated at the time of acquisition based on their allocated
33 interest in the common elements before the taking.

34 (e) The court decree shall be recorded in every county in which any portion of the
35 planned community is located. (1998-199, s. 1.)
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37 **§ 47F-1-108. Supplemental general principles of law applicable.**

38 The principles of law and equity as well as other North Carolina statutes (including the
39 provisions of the North Carolina Nonprofit Corporation Act) supplement the provisions of this
40 Chapter, except to the extent inconsistent with this Chapter. When these principles or statutes
41 are inconsistent or conflict with this Chapter, the provisions of this Chapter will control.
42 (1998-199, s. 1.)
43

44 **§ 47F-1-109. Reserved for future codification purposes.**