

**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.)

36  
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.**

45  
46  
47 Article 2.

48 Creation, Alteration, and Termination of Planned Communities.

49 **§ 47F-2-101. Creation of the planned community.**

50 A declaration creating a planned community shall be executed in the same manner as a  
51 deed, shall be recorded in every county in which any portion of the planned community is

1 located, and shall be indexed in the Grantee index in the name of the planned community and  
2 the association and in the Grantor index in the name of each person executing the declaration.  
3 (1998-199, s. 1.)  
4

5 **§ 47F-2-102. Reserved for future codification purposes.**  
6

7 **§ 47F-2-103. Construction and validity of declaration and bylaws.**

8 (a) All provisions of the declaration and bylaws are severable.

9 (b) The rule against perpetuities may not be applied to defeat any provision of the  
10 declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47F-3-102(1).

11 (c) In the event of a conflict between the provisions of the declaration and the bylaws,  
12 the declaration prevails except to the extent the declaration is inconsistent with this Chapter.

13 (d) Title to a lot and common elements is not rendered unmarketable or otherwise  
14 affected by reason of an insubstantial failure of the declaration to comply with this Chapter.  
15 Whether a substantial failure to comply with this Chapter impairs marketability shall be  
16 determined by the law of this State relating to marketability. (1998-199, s. 1.)  
17

18 **§§ 47F-2-104 through 47F-2-116. Reserved for future codification purposes.**  
19

20 **§ 47F-2-117. Amendment of declaration.**

21 (a) Except in cases of amendments that may be executed by a declarant under the terms  
22 of the declaration or by certain lot owners under G.S. 47F-2-118(b), the declaration may be  
23 amended only by affirmative vote or written agreement signed by lot owners of lots to which at  
24 least sixty-seven percent (67%) of the votes in the association are allocated, or any larger  
25 majority the declaration specifies or by the declarant if necessary for the exercise of any  
26 development right. The declaration may specify a smaller number only if all of the lots are  
27 restricted exclusively to nonresidential use.

28 (b) No action to challenge the validity of an amendment adopted pursuant to this  
29 section may be brought more than one year after the amendment is recorded.

30 (c) Every amendment to the declaration shall be recorded in every county in which any  
31 portion of the planned community is located and is effective only upon recordation. An  
32 amendment shall be indexed in the Grantee index in the name of the planned community and  
33 the association and in the Grantor index in the name of each person executing the amendment.

34 (d) Reserved.

35 (e) Amendments to the declaration required by this Chapter to be recorded by the  
36 association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41.  
37 (1998-199, s. 1.)  
38

39 **§ 47F-2-118. Termination of planned community.**

40 (a) Except in the case of taking of all the lots by eminent domain (G.S. 47F-1-107), a  
41 planned community may be terminated only by agreement of lot owners of lots to which at  
42 least eighty percent (80%) of the votes in the association are allocated, or any larger percentage  
43 the declaration specifies. The declaration may specify a smaller percentage only if all of the lots  
44 in the planned community are restricted exclusively to nonresidential uses.

45 (b) An agreement to terminate shall be evidenced by the execution of a termination  
46 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of lot  
47 owners. The termination agreement shall specify a date after which the agreement will be void  
48 unless it is recorded before that date. A termination agreement and all ratifications thereof shall  
49 be recorded in every county in which a portion of the planned community is situated and is  
50 effective only upon recordation.

1 (c) A termination agreement may provide for sale of the common elements, but may not  
2 require that the lots be sold following termination, unless the declaration as originally recorded  
3 provided otherwise or unless all the lot owners consent to the sale. If, pursuant to the  
4 agreement, any real estate in the planned community is to be sold following termination, the  
5 termination agreement shall set forth the minimum terms of the sale.

6 (d) The association, on behalf of the lot owners, may contract for the sale of real estate  
7 in the planned community, but the contract is not binding until approved pursuant to  
8 subsections (a) and (b) of this section. Until the sale has been concluded and the proceeds  
9 thereof distributed, the association continues in existence with all powers it had before  
10 termination. Proceeds of the sale shall be distributed to lot owners and lienholders as their  
11 interests may appear, as provided in the termination agreement.

12 (e) If the real estate constituting the planned community is not to be sold following  
13 termination, title to the common elements vests in the lot owners upon termination as tenants in  
14 common in proportion to their respective interests as provided in the termination agreement.

15 (f) Following termination of the planned community, the proceeds of any sale of real  
16 estate, together with the assets of the association, are held by the association as trustee for lot  
17 owners and holders of liens on the lots as their interests may appear. All other creditors of the  
18 association are to be treated as if they had perfected liens on the common elements immediately  
19 before termination.

20 (g) If the termination agreement does not provide for the distribution of sales proceeds  
21 pursuant to subsection (d) of this section or the vesting of title pursuant to subsection (e) of this  
22 section, sales proceeds shall be distributed and title shall vest in accordance with each lot  
23 owner's allocated share of common expense liability.

24 (h) Except as provided in subsection (i) of this section, foreclosure or enforcement of a  
25 lien or encumbrance against the common elements does not of itself terminate the planned  
26 community, and foreclosure or enforcement of a lien or encumbrance against a portion of the  
27 common elements other than withdrawable real estate does not withdraw that portion from the  
28 planned community. Foreclosure or enforcement of a lien or encumbrance against  
29 withdrawable real estate does not of itself withdraw that real estate from the planned  
30 community, but the person taking title thereto has the right to require from the association,  
31 upon request, an amendment excluding the real estate from the planned community.

32 (i) If a lien or encumbrance against a portion of the real estate comprising the planned  
33 community has priority over the declaration and the lien or encumbrance has not been partially  
34 released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an  
35 instrument excluding the real estate subject to that lien or encumbrance from the planned  
36 community. (1998-199, s. 1.)  
37

38 **§ 47F-2-119. Reserved for future codification purposes.**

39  
40 **§ 47F-2-120. Master associations.**

41 If the declaration for a planned community provides that any of the powers described in  
42 G.S. 47F-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation  
43 which exercises those or other powers on behalf of one or more other planned communities or  
44 for the benefit of the lot owners of one or more other planned communities, all provisions of  
45 this act applicable to lot owners' associations apply to any such corporation. (1998-199, s. 1.)  
46

47 **§ 47F-2-121. Merger or consolidation of planned communities.**

48 (a) Any two or more planned communities, by agreement of the lot owners as provided  
49 in subsection (b) of this section, may be merged or consolidated into a single planned  
50 community. In the event of a merger or consolidation, unless the agreement otherwise provides,  
51 the resultant planned community is, for all purposes, the legal successor of all of the preexisting

1 planned communities, and the operations and activities of all associations of the preexisting  
2 planned communities shall be merged or consolidated into a single association which shall hold  
3 all powers, rights, obligations, assets, and liabilities of all preexisting associations.

4 (b) An agreement of two or more planned communities to merge or consolidate  
5 pursuant to subsection (a) of this section shall be evidenced by an agreement prepared,  
6 executed, recorded, and certified by the president of the association of each of the preexisting  
7 planned communities following approval by owners of lots to which are allocated the  
8 percentage of votes in each planned community required to terminate that planned community.  
9 Any such agreement shall be recorded in every county in which a portion of the planned  
10 community is located and is not effective until recorded.

11 (c) Every merger or consolidation agreement shall provide for the reallocation of the  
12 allocated interests in the new association among the lots of the resultant planned community  
13 either (i) by stating the reallocations or the formulas upon which they are based or (ii) by  
14 stating the percentage of overall common expense liabilities and votes in the new association  
15 which are allocated to all of the lots comprising each of the preexisting planned communities,  
16 and providing that the portion of the percentages allocated to each lot formerly comprising a  
17 part of the preexisting planned community shall be equal to the percentages of common  
18 expense liabilities and votes in the association allocated to that lot by the declaration of the  
19 preexisting planned community. (1998-199, s. 1.)  
20

### 21 Article 3.

#### 22 Management of Planned Community.

#### 23 § 47F-3-101. Organization of owners' association.

24 A lot owners' association shall be incorporated no later than the date the first lot in the  
25 planned community is conveyed. The membership of the association at all times shall consist  
26 exclusively of all the lot owners or, following termination of the planned community, of all  
27 persons entitled to distributions of proceeds under G.S. 47F-2-118. Every association created  
28 after the effective date of this Chapter shall be organized as a nonprofit corporation. (1998-199,  
29 s. 1.)  
30

#### 31 § 47F-3-102. Powers of owners' association.

32 Unless the articles of incorporation or the declaration expressly provides to the contrary, the  
33 association may:

- 34 (1) Adopt and amend bylaws and rules and regulations;
- 35 (2) Adopt and amend budgets for revenues, expenditures, and reserves and  
36 collect assessments for common expenses from lot owners;
- 37 (3) Hire and discharge managing agents and other employees, agents, and  
38 independent contractors;
- 39 (4) Institute, defend, or intervene in litigation or administrative proceedings on  
40 matters affecting the planned community;
- 41 (5) Make contracts and incur liabilities;
- 42 (6) Regulate the use, maintenance, repair, replacement, and modification of  
43 common elements;
- 44 (7) Cause additional improvements to be made as a part of the common  
45 elements;
- 46 (8) Acquire, hold, encumber, and convey in its own name any right, title, or  
47 interest to real or personal property, provided that common elements may be  
48 conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;
- 49 (9) Grant easements, leases, licenses, and concessions through or over the  
50 common elements;

- 1 (10) Impose and receive any payments, fees, or charges for the use, rental, or  
2 operation of the common elements other than the limited common elements  
3 and for services provided to lot owners;
- 4 (11) Impose reasonable charges for late payment of assessments, not to exceed  
5 the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any  
6 assessment installment unpaid and, after notice and an opportunity to be  
7 heard, suspend privileges or services provided by the association (except  
8 rights of access to lots) during any period that assessments or other amounts  
9 due and owing to the association remain unpaid for a period of 30 days or  
10 longer;
- 11 (12) After notice and an opportunity to be heard, impose reasonable fines or  
12 suspend privileges or services provided by the association (except rights of  
13 access to lots) for reasonable periods for violations of the declaration,  
14 bylaws, and rules and regulations of the association;
- 15 (13) Impose reasonable charges in connection with the preparation and  
16 recordation of documents, including, without limitation, amendments to the  
17 declaration or statements of unpaid assessments;
- 18 (14) Provide for the indemnification of and maintain liability insurance for its  
19 officers, executive board, directors, employees, and agents;
- 20 (15) Assign its right to future income, including the right to receive common  
21 expense assessments;
- 22 (16) Exercise all other powers that may be exercised in this State by legal entities  
23 of the same type as the association; and
- 24 (17) Exercise any other powers necessary and proper for the governance and  
25 operation of the association. (1998-199, s. 1; 2004-109, s. 4; 2005-422, s. 1.)  
26

27 **§ 47F-3-103. Executive board members and officers.**

28 (a) Except as provided in the declaration, in the bylaws, in subsection (b) of this  
29 section, or in other provisions of this Chapter, the executive board may act in all instances on  
30 behalf of the association. In the performance of their duties, officers and members of the  
31 executive board shall discharge their duties in good faith. Officers shall act according to the  
32 standards for officers of a nonprofit corporation set forth in G.S. 55A-8-42, and members shall  
33 act according to the standards for directors of a nonprofit corporation set forth in G.S.  
34 55A-8-30.

35 (b) The executive board may not act unilaterally on behalf of the association to amend  
36 the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to  
37 elect members of the executive board or determine the qualifications, powers and duties, or  
38 terms of office of executive board members (G.S. 47F-3-103(e)), but the executive board may  
39 unilaterally fill vacancies in its membership for the unexpired portion of any term.  
40 Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a  
41 majority vote of all persons present and entitled to vote at any meeting of the lot owners at  
42 which a quorum is present, may remove any member of the executive board with or without  
43 cause, other than a member appointed by the declarant.

44 (c) Within 30 days after adoption of any proposed budget for the planned community,  
45 the executive board shall provide to all the lot owners a summary of the budget and a notice of  
46 the meeting to consider ratification of the budget, including a statement that the budget may be  
47 ratified without a quorum. The executive board shall set a date for a meeting of the lot owners  
48 to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60  
49 days after mailing of the summary and notice. There shall be no requirement that a quorum be  
50 present at the meeting. The budget is ratified unless at that meeting a majority of all the lot  
51 owners in the association or any larger vote specified in the declaration rejects the budget. In

1 the event the proposed budget is rejected, the periodic budget last ratified by the lot owners  
2 shall be continued until such time as the lot owners ratify a subsequent budget proposed by the  
3 executive board.

4 (d) The declaration may provide for a period of declarant control of the association,  
5 during which period a declarant, or persons designated by the declarant, may appoint and  
6 remove the officers and members of the executive board.

7 (e) Not later than the termination of any period of declarant control, the lot owners shall  
8 elect an executive board of at least three members, at least a majority of whom shall be lot  
9 owners. The executive board shall elect the officers. The executive board members and officers  
10 shall take office upon election.

11 (f) The association shall publish the names and addresses of all officers and board  
12 members of the association within 30 days of their election. (1998-199, s. 1; 2005-422, ss. 2,  
13 3.)

14  
15 **§ 47F-3-104. Transfer of special declarant rights.**

16 Except for transfer of declarant rights pursuant to foreclosure, no special declarant right  
17 (G.S. 47F-1-103(28)) may be transferred except by an instrument evidencing the transfer  
18 recorded in every county in which any portion of the planned community is located. The  
19 instrument is not effective unless executed by the transferee. (1998-199, s. 1.)  
20

21 **§ 47F-3-105. Termination of contracts and leases of declarant.**

22 If entered into before the executive board elected by the lot owners pursuant to G.S.  
23 47F-3-103(e) takes office, any contract or lease affecting or related to the planned community  
24 that is not bona fide or was unconscionable to the lot owners at the time entered into under the  
25 circumstances then prevailing, may be terminated without penalty by the association at any  
26 time after the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes  
27 office upon not less than 90 days' notice to the other party. (1998-199, s. 1.)  
28

29 **§ 47F-3-106. Bylaws.**

30 (a) The bylaws of the association shall provide for:

- 31 (1) The number of members of the executive board and the titles of the officers  
32 of the association;
- 33 (2) Election by the executive board of officers of the association;
- 34 (3) The qualifications, powers and duties, terms of office, and manner of  
35 electing and removing executive board members and officers and filling  
36 vacancies;
- 37 (4) Which, if any, of its powers the executive board or officers may delegate to  
38 other persons or to a managing agent;
- 39 (5) Which of its officers may prepare, execute, certify, and record amendments  
40 to the declaration on behalf of the association; and
- 41 (6) The method of amending the bylaws.

42 (b) The bylaws may provide for any other matters the association deems necessary and  
43 appropriate. (1998-199, s. 1.)  
44

45 **§ 47F-3-107. Upkeep of planned community; responsibility and assessments for damages.**

46 (a) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b)  
47 of this section, the association is responsible for causing the common elements to be  
48 maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to  
49 recover the costs of such maintenance, repair, or replacement except that the costs of  
50 maintenance, repair, or replacement of a limited common element shall be assessed as provided  
51 in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is

1 responsible for the maintenance and repair of his lot and any improvements thereon. Each lot  
2 owner shall afford to the association and when necessary to another lot owner access through  
3 the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement  
4 activity.

5 (b) If a lot owner is legally responsible for damage inflicted on any common element,  
6 the association may direct such lot owner to repair such damage, or the association may itself  
7 cause the repairs to be made and recover damages from the responsible lot owner.

8 (c) If damage is inflicted on any lot by an agent of the association in the scope of the  
9 agent's activities as such agent, the association is liable to repair such damage or to reimburse  
10 the lot owner for the cost of repairing such damages. The association shall also be liable for any  
11 losses to the lot owner.

12 (d) When the claim under subsection (b) or (c) of this section is less than or equal to the  
13 jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may  
14 request that a hearing be held before an adjudicatory panel appointed by the executive board to  
15 determine if a lot owner is responsible for damages to any common element or the association  
16 is responsible for damages to any lot. If the executive board fails to appoint an adjudicatory  
17 panel to hear such matters, hearings under this section shall be held before the executive board.  
18 Such panel shall accord to the party charged with causing damages notice of the charge,  
19 opportunity to be heard and to present evidence, and notice of the decision. This panel may  
20 assess liability for each damage incident against each lot owner charged or against the  
21 association not in excess of the jurisdictional amount established for small claims by G.S.  
22 7A-210. When the claim under subsection (b) or (c) of this section exceeds the jurisdictional  
23 amount established for small claims by G.S. 7A-210, liability of any lot owner charged or the  
24 association shall be determined as otherwise provided by law. Liabilities of lot owners  
25 determined by adjudicatory hearing or as otherwise provided by law shall be assessments  
26 secured by lien under G.S. 47F-3-116. Liabilities of the association determined by adjudicatory  
27 hearing or as otherwise provided by law may be offset by the lot owner against sums owing to  
28 the association and if so offset, shall reduce the amount of any lien of the association against  
29 the lot at issue.

30 (e) The association shall not be liable for maintenance, repair, and all other expenses in  
31 connection with any real estate which has not been incorporated into the planned community.  
32 (1998-199, s. 1.)

33  
34 **§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or**  
35 **services.**

36 Unless a specific procedure for the imposition of fines or suspension of planned community  
37 privileges or services is provided for in the declaration, a hearing shall be held before the  
38 executive board or an adjudicatory panel appointed by the executive board to determine if any  
39 lot owner should be fined or if planned community privileges or services should be suspended  
40 pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any  
41 adjudicatory panel appointed by the executive board shall be composed of members of the  
42 association who are not officers of the association or members of the executive board. The lot  
43 owner charged shall be given notice of the charge, opportunity to be heard and to present  
44 evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to  
45 exceed one hundred dollars (\$100.00) may be imposed for the violation and without further  
46 hearing, for each day more than five days after the decision that the violation occurs. Such fines  
47 shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of  
48 planned community privileges or services should be imposed, the suspension may be continued  
49 without further hearing until the violation or delinquency is cured. The lot owner may appeal  
50 the decision of an adjudicatory panel to the full executive board by delivering written notice of  
51 appeal to the executive board within 15 days after the date of the decision. The executive board

1 may affirm, vacate, or modify the prior decision of the adjudicatory body. (1997-456, s. 27;  
2 1998-199, s. 1; 2005-422, s. 4.)  
3

4 **§ 47F-3-108. Meetings.**

5 (a) A meeting of the association shall be held at least once each year. Special meetings  
6 of the association may be called by the president, a majority of the executive board, or by lot  
7 owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes  
8 in the association. Not less than 10 nor more than 60 days in advance of any meeting, the  
9 secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent  
10 prepaid by United States mail to the mailing address of each lot or to any other mailing address  
11 designated in writing by the lot owner, or sent by electronic means, including by electronic  
12 mail over the Internet, to an electronic mailing address designated in writing by the lot owner.  
13 The notice of any meeting shall state the time and place of the meeting and the items on the  
14 agenda, including the general nature of any proposed amendment to the declaration or bylaws,  
15 any budget changes, and any proposal to remove a director or officer.

16 (b) Meetings of the executive board shall be held as provided in the bylaws. At regular  
17 intervals, the executive board meeting shall provide lot owners an opportunity to attend a  
18 portion of an executive board meeting and to speak to the executive board about their issues or  
19 concerns. The executive board may place reasonable restrictions on the number of persons who  
20 speak on each side of an issue and may place reasonable time restrictions on persons who  
21 speak.

22 (c) Except as otherwise provided in the bylaws, meetings of the association and the  
23 executive board shall be conducted in accordance with the most recent edition of Robert's Rules  
24 of Order Newly Revised. (1998-199, s. 1; 2004-109, s. 6; 2005-422, s. 5.)  
25

26 **§ 47F-3-109. Quorums.**

27 (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting  
28 of the association if persons entitled to cast ten percent (10%) of the votes which may be cast  
29 for election of the executive board are present in person or by proxy at the beginning of the  
30 meeting.

31 (b) Unless the bylaws specify a larger percentage, a quorum is deemed present  
32 throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of  
33 the votes on that board are present at the beginning of the meeting.

34 (c) In the event business cannot be conducted at any meeting because a quorum is not  
35 present, that meeting may be adjourned to a later date by the affirmative vote of a majority of  
36 those present in person or by proxy. Notwithstanding any provision to the contrary in the  
37 declaration or the bylaws, the quorum requirement at the next meeting shall be one-half of the  
38 quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision  
39 shall continue to reduce the quorum by fifty percent (50%) from that required at the previous  
40 meeting, as previously reduced, until such time as a quorum is present and business can be  
41 conducted. (1998-199, s. 1.)  
42

43 **§ 47F-3-110. Voting; proxies.**

44 (a) If only one of the multiple owners of a lot is present at a meeting of the association,  
45 the owner who is present is entitled to cast all the votes allocated to that lot. If more than one of  
46 the multiple owners are present, the votes allocated to that lot may be cast only in accordance  
47 with the agreement of a majority in interest of the multiple owners, unless the declaration or  
48 bylaws expressly provide otherwise. Majority agreement is conclusively presumed if any one  
49 of the multiple owners casts the votes allocated to that lot without protest being made promptly  
50 to the person presiding over the meeting by any of the other owners of the lot.

1 (b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot  
2 owner. If a lot is owned by more than one person, each owner of the lot may vote or register  
3 protest to the casting of votes by the other owners of the lot through a duly executed proxy. A  
4 lot owner may not revoke a proxy given pursuant to this section except by actual notice of  
5 revocation to the person presiding over a meeting of the association. A proxy is void if it is not  
6 dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

7 (c) If the declaration requires that votes on specified matters affecting the planned  
8 community be cast by lessees rather than lot owners of leased lots, (i) the provisions of  
9 subsections (a) and (b) of this section apply to lessees as if they were lot owners; (ii) lot owners  
10 who have leased their lots to other persons may not cast votes on those specified matters; and  
11 (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting  
12 those matters as if they were lot owners. Lot owners shall also be given notice, in the manner  
13 provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

14 (d) No votes allocated to a lot owned by the association may be cast.

15 (e) The declaration may provide that on specified issues only a defined subgroup of lot  
16 owners may vote provided:

17 (1) The issue being voted is of special interest solely to the members of the  
18 subgroup; and

19 (2) All except de minimis cost that will be incurred based on the vote taken will  
20 be assessed solely against those lot owners entitled to vote.

21 (f) For purposes of subdivision (e)(1) above, an issue to be voted on is not a special  
22 interest solely to a subgroup if it substantially affects the overall appearance of the planned  
23 community or substantially affects living conditions of lot owners not included in the voting  
24 subgroup. (1998-199, s. 1.)  
25

#### 26 **§ 47F-3-111. Tort and contract liability.**

27 (a) Neither the association nor any lot owner except the declarant is liable for that  
28 declarant's torts in connection with any part of the planned community which that declarant has  
29 the responsibility to maintain.

30 (b) An action alleging a wrong done by the association shall be brought against the  
31 association and not against a lot owner.

32 (c) Any statute of limitation affecting the association's right of action under this section  
33 is tolled until the period of declarant control terminates. A lot owner is not precluded from  
34 bringing an action contemplated by this section because the person is a lot owner or a member  
35 of the association. (1998-199, s. 1.)  
36

#### 37 **§ 47F-3-112. Conveyance or encumbrance of common elements.**

38 (a) Portions of the common elements may be conveyed or subjected to a security  
39 interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in  
40 the association, or any larger percentage the declaration specifies, agree in writing to that  
41 action; provided that all the owners of lots to which any limited common element is allocated  
42 shall agree in order to convey that limited common element or subject it to a security interest.  
43 The declaration may specify a smaller percentage only if all the lots are restricted exclusively  
44 to nonresidential uses. Distribution of proceeds of the sale of a limited common element shall  
45 be as provided by agreement between the lot owners to which it is allocated and the  
46 association. Proceeds of the sale or financing of a common element (other than a limited  
47 common element) shall be an asset of the association.

48 (b) The association, on behalf of the lot owners, may contract to convey common  
49 elements or subject them to a security interest, but the contract is not enforceable against the  
50 association until approved pursuant to subsection (a) of this section. Thereafter, the association  
51 has all powers necessary and appropriate to effect the conveyance or encumbrance, free and

1 clear of any interest of any lot owner or the association in or to the common element conveyed  
2 or encumbered, including the power to execute deeds or other instruments.

3 (c) Any purported conveyance, encumbrance, or other voluntary transfer of common  
4 elements, unless made pursuant to this section is void.

5 (d) No conveyance or encumbrance of common elements pursuant to this section may  
6 deprive any lot of its rights of access and support. (1998-199, s. 1.)  
7

8 **§ 47F-3-113. Insurance.**

9 (a) Commencing not later than the time of the first conveyance of a lot to a person other  
10 than a declarant, the association shall maintain, to the extent reasonably available:

11 (1) Property insurance on the common elements insuring against all risks of  
12 direct physical loss commonly insured against including fire and extended  
13 coverage perils. The total amount of insurance after application of any  
14 deductibles shall be not less than eighty percent (80%) of the replacement  
15 cost of the insured property at the time the insurance is purchased and at  
16 each renewal date, exclusive of land, excavations, foundations, and other  
17 items normally excluded from property policies; and

18 (2) Liability insurance in reasonable amounts, covering all occurrences  
19 commonly insured against for death, bodily injury, and property damage  
20 arising out of or in connection with the use, ownership, or maintenance of  
21 the common elements.

22 (b) If the insurance described in subsection (a) of this section is not reasonably  
23 available, the association promptly shall cause notice of that fact to be hand-delivered or sent  
24 prepaid by United States mail to all lot owners. The declaration may require the association to  
25 carry any other insurance, and the association in any event may carry any other insurance it  
26 deems appropriate to protect the association or the lot owners.

27 (c) Insurance policies carried pursuant to subsection (a) of this section shall provide  
28 that:

29 (1) Each lot owner is an insured person under the policy to the extent of the lot  
30 owner's insurable interest;

31 (2) The insurer waives its right to subrogation under the policy against any lot  
32 owner or member of the lot owner's household;

33 (3) No act or omission by any lot owner, unless acting within the scope of the  
34 owner's authority on behalf of the association, will preclude recovery under  
35 the policy; and

36 (4) If, at the time of a loss under the policy, there is other insurance in the name  
37 of a lot owner covering the same risk covered by the policy, the association's  
38 policy provides primary insurance.

39 (d) Any loss covered by the property policy under subdivision (a)(1) of this section  
40 shall be adjusted with the association, but the insurance proceeds for that loss are payable to  
41 any insurance trustee designated for that purpose, or otherwise to the association, and not to  
42 any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association  
43 shall hold any insurance proceeds in trust for lot owners and lienholders as their interests may  
44 appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be  
45 disbursed first for the repair or restoration of the damaged property, and lot owners and  
46 lienholders are not entitled to receive payment of any portion of the proceeds unless there is a  
47 surplus of proceeds after the property has been completely repaired or restored, or the planned  
48 community is terminated.

49 (e) An insurance policy issued to the association does not prevent a lot owner from  
50 obtaining insurance for the lot owner's own benefit.

1 (f) An insurer that has issued an insurance policy under this section shall issue  
2 certificates or memoranda of insurance to the association and, upon written request, to any lot  
3 owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not  
4 cancel or refuse to renew it until 30 days after notice of the proposed cancellation or  
5 nonrenewal has been mailed to the association, each lot owner, and each mortgagee or  
6 beneficiary under a deed of trust to whom certificates or memoranda of insurance have been  
7 issued at their respective last known addresses.

8 (g) Any portion of the planned community for which insurance is required under  
9 subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced  
10 promptly by the association unless (i) the planned community is terminated, (ii) repair or  
11 replacement would be illegal under any State or local health or safety statute or ordinance, or  
12 (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote, including one  
13 hundred percent (100%) approval of owners assigned to the limited common elements not to be  
14 rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a  
15 common expense. If any portion of the planned community is not repaired or replaced, (i) the  
16 insurance proceeds attributable to the damaged common elements shall be used to restore the  
17 damaged area to a condition compatible with the remainder of the planned community, (ii) the  
18 insurance proceeds attributable to limited common elements which are not rebuilt shall be  
19 distributed to the owners of the lots to which those limited common elements were allocated, or  
20 to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be  
21 distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the  
22 common expense liabilities of all the lots. Notwithstanding the provisions of this subsection,  
23 G.S. 47F-2-118 (termination of the planned community) governs the distribution of insurance  
24 proceeds if the planned community is terminated.

25 (h) The provisions of this section may be varied or waived in the case of a planned  
26 community all of whose lots are restricted to nonresidential use. (1998-199, s. 1.)  
27

#### 28 **§ 47F-3-114. Surplus funds.**

29 Unless otherwise provided in the declaration, any surplus funds of the association  
30 remaining after payment of or provision for common expenses, the funding of a reasonable  
31 operating expense surplus, and any prepayment of reserves shall be paid to the lot owners in  
32 proportion to their common expense liabilities or credited to them to reduce their future  
33 common expense assessments. (1998-199, s. 1.)  
34

#### 35 **§ 47F-3-115. Assessments for common expenses.**

36 (a) Except as otherwise provided in the declaration, until the association makes a  
37 common expense assessment, the declarant shall pay all common expenses. After any  
38 assessment has been made by the association, assessments thereafter shall be made at least  
39 annually.

40 (b) Except for assessments under subsections (c), (d), and (e) of this section, all  
41 common expenses shall be assessed against all the lots in accordance with the allocations set  
42 forth in the declaration. Any past-due common expense assessment or installment thereof bears  
43 interest at the rate established by the association not exceeding eighteen percent (18%) per  
44 year. For planned communities created prior to January 1, 1999, interest may be charged on any  
45 past-due common expense assessment or installment only if the declaration provides for  
46 interest charges, and where the declaration does not otherwise specify the interest rate, the rate  
47 may not exceed eighteen percent (18%) per year.

48 (c) To the extent required by the declaration:

49 (1) Any common expense associated with the maintenance, repair, or  
50 replacement of a limited common element shall be assessed against the lots

1 to which that limited common element is assigned, equally, or in any other  
2 proportion that the declaration provides;

3 (2) Any common expense or portion thereof benefiting fewer than all of the lots  
4 shall be assessed exclusively against the lots benefitted; and

5 (3) The costs of insurance shall be assessed in proportion to risk and the costs of  
6 utilities shall be assessed in proportion to usage.

7 (d) Assessments to pay a judgment against the association may be made only against  
8 the lots in the planned community at the time the judgment was entered, in proportion to their  
9 common expense liabilities.

10 (e) If any common expense is caused by the negligence or misconduct of any lot owner  
11 or occupant, the association may assess that expense exclusively against that lot owner or  
12 occupant's lot.

13 (f) If common expense liabilities are reallocated, common expense assessments and  
14 any installment thereof not yet due shall be recalculated in accordance with the reallocated  
15 common expense liabilities. (1998-199, s. 1.)

16  
17 **§ 47F-3-116. Lien for assessments.**

18 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days or  
19 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of  
20 the clerk of superior court of the county in which the lot is located in the manner provided  
21 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts  
22 to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days  
23 prior to filing the lien, the association shall mail a statement of the assessment amount due by  
24 first-class mail to the physical address of the lot and the lot owner's address of record with the  
25 association, and, if different, to the address for the lot owner shown on the county tax records  
26 and the county real property records for the lot. If the lot owner is a corporation, the statement  
27 shall also be sent by first-class mail to the mailing address of the registered agent for the  
28 corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other  
29 charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are  
30 enforceable as assessments under this section. Except as provided in subsections (a1) and (a2)  
31 of this section, the association, acting through the executive board, may foreclose the claim of  
32 lien in like manner as a mortgage on real estate under power of sale or under Article 2A of  
33 Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The  
34 association shall not foreclose the claim of lien unless the executive board votes to commence  
35 the proceeding against the specific lot.

36 (a1) An association may not foreclose an association assessment lien under Article 2A of  
37 Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed  
38 by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely  
39 associated with fines imposed by the association. The association, however, may enforce the  
40 lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

41 (a2) An association shall not levy, charge, or attempt to collect a service, collection,  
42 consulting, or administration fee from any lot owner unless the fee is expressly allowed in the  
43 declaration. Any lien securing a debt consisting solely of these fees may only be enforced by  
44 judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

45 (b) The lien under this section is prior to all liens and encumbrances on a lot except (i)  
46 liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust  
47 on the lot) recorded before the docketing of the claim of lien in the office of the clerk of  
48 superior court, and (ii) liens for real estate taxes and other governmental assessments and  
49 charges against the lot. This subsection does not affect the priority of mechanics' or  
50 materialmen's liens.

1 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien  
2 are instituted within three years after the docketing of the claim of lien in the office of the clerk  
3 of superior court.

4 (d) This section does not prohibit other actions to recover the sums for which  
5 subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of  
6 foreclosure.

7 (e) A judgment, decree, or order in any action brought under this section shall include  
8 costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest  
9 the collection of debt and enforcement of a lien after the expiration of the 15-day period  
10 following notice as required in subsection (e1) of this section, then reasonable attorneys' fees  
11 shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses  
12 incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot  
13 owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to  
14 the amount or validity of the debt and lien asserted or the association's right to collect the debt  
15 and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection  
16 shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this  
17 section or G.S. 47F-3-120.

18 (e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot  
19 owner is notified in writing of the association's intent to seek payment of attorneys' fees and  
20 court costs. The notice must be sent by first-class mail to the property address and, if different,  
21 to the mailing address for the lot owner in the association's records. The association must make  
22 reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing  
23 address. The notice shall set out the outstanding balance due as of the date of the notice and  
24 state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the  
25 outstanding balance without the attorneys' fees and court costs. If the lot owner pays the  
26 outstanding balance within this period, then the lot owner shall have no obligation to pay  
27 attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to  
28 contact a representative of the association to discuss a payment schedule for the outstanding  
29 balance as provided in subsection (e2) of this section and shall provide the name and telephone  
30 number of the representative.

31 (e2) The association, acting through its executive board and in the board's sole  
32 discretion, may agree to allow payment of an outstanding balance in installments. Neither the  
33 association nor the lot owner is obligated to offer or accept any proposed installment schedule.  
34 Reasonable administrative fees and costs for accepting and processing installments may be  
35 added to the outstanding balance and included in an installment payment schedule. Reasonable  
36 attorneys' fees may be added to the outstanding balance and included in an installment schedule  
37 only after the lot owner has been given notice as required in subsection (e1) of this section.

38 (f) Where the holder of a first mortgage or first deed of trust of record, or other  
39 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first  
40 deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the  
41 assessments against such lot which became due prior to the acquisition of title to such lot by  
42 such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible  
43 from all the lot owners including such purchaser, its heirs, successors, and assigns.

44 (g) A claim of lien shall set forth the name and address of the association, the name of  
45 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the  
46 amount of the lien claimed. The first page of the claim of lien shall contain the following  
47 statement in print that is in boldface, capital letters and no smaller than the largest print used  
48 elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR  
49 PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION  
50 MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE  
51 MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the

1 claim of lien on behalf of the association shall attach to and file with the claim of lien a  
2 certificate of service attesting to the attempt of service on the record owner, which service shall  
3 be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a  
4 complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of  
5 the association shall be deemed to have met the requirements of this subsection if service has  
6 been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and  
7 (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical  
8 address of the lot and the lot owner's address of record with the association, and, if different, to  
9 the address for the lot owner shown on the county tax records and the county real property  
10 records for the lot. In the event that the owner of record is not a natural person, and actual  
11 service is not achieved, the person signing the claim of lien on behalf of the association shall be  
12 deemed to have met the requirements of this subsection if service has been attempted once  
13 pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule  
14 4(j)(9). (1998-199, s. 1; 2005-422, s. 6; 2009-515, s. 1; 2011-362, s. 1.)

15  
16 **§ 47F-3-117. Reserved for future codification purposes.**

17  
18 **§ 47F-3-118. Association records.**

19 (a) The association shall keep financial records sufficiently detailed to enable the  
20 association to comply with this Chapter. All financial and other records, including records of  
21 meetings of the association and executive board, shall be made reasonably available for  
22 examination by any lot owner and the lot owner's authorized agents as required in the bylaws  
23 and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be  
24 maintained, the association shall keep accurate records of all cash receipts and expenditures and  
25 all assets and liabilities. In addition to any specific information that is required by the bylaws to  
26 be assembled and reported to the lot owners at specified times, the association shall make an  
27 annual income and expense statement and balance sheet available to all lot owners at no charge  
28 and within 75 days after the close of the fiscal year to which the information relates.  
29 Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's  
30 books and records for the current or immediately preceding fiscal year may be required by a  
31 vote of the majority of the executive board or by the affirmative vote of a majority of the lot  
32 owners present and voting in person or by proxy at any annual meeting or any special meeting  
33 duly called for that purpose.

34 (b) The association, upon written request, shall furnish to a lot owner or the lot owner's  
35 authorized agents a statement setting forth the amount of unpaid assessments and other charges  
36 against a lot. The statement shall be furnished within 10 business days after receipt of the  
37 request and is binding on the association, the executive board, and every lot owner.

38 (c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no  
39 financial payments, including payments made in the form of goods and services, may be made  
40 to any officer or member of the association's executive board or to a business, business  
41 associate, or relative of an officer or member of the executive board, except as expressly  
42 provided for in the bylaws or in payments for services or expenses paid on behalf of the  
43 association which are approved in advance by the executive board. (1998-199, s. 1; 2005-422,  
44 s. 7.)

45  
46 **§ 47F-3-119. Association as trustee.**

47 With respect to a third person dealing with the association in the association's capacity as a  
48 trustee under G.S. 47F-2-118 following termination or G.S. 47F-3-113 for insurance proceeds,  
49 the existence of trust powers and their proper exercise by the association may be assumed  
50 without inquiry. A third person is not bound to inquire whether the association has power to act  
51 as trustee or is properly exercising trust powers, and a third person, without actual knowledge

1 that the association is exceeding or improperly exercising its powers, is fully protected in  
2 dealing with the association as if it possessed and properly exercised the powers it purports to  
3 exercise. A third person is not bound to assure the proper application of trust assets paid or  
4 delivered to the association in its capacity as trustee. (1998-199, s. 1.)  
5

6 **§ 47F-3-120. Declaration limits on attorneys' fees.**

7 Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of  
8 incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may  
9 award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed  
10 in the declaration. (1998-199, s. 1.)  
11

12 **§ 47F-3-121. American and State flags and political sign displays.**

13 Notwithstanding any provision in any declaration of covenants, no restriction on the use of  
14 land shall be construed to:

- 15 (1) Regulate or prohibit the display of the flag of the United States or North  
16 Carolina, of a size no greater than four feet by six feet, which is displayed in  
17 accordance with or in a manner consistent with the patriotic customs set  
18 forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the  
19 flag of the United States unless:  
20 a. For restrictions registered prior to October 1, 2005, the restriction  
21 specifically uses the following terms:  
22 1. Flag of the United States of America;  
23 2. American flag;  
24 3. United States flag; or  
25 4. North Carolina flag.  
26 b. For restrictions registered on or after October 1, 2005, the restriction  
27 shall be written on the first page of the instrument or conveyance in  
28 print that is in boldface type, capital letters, and no smaller than the  
29 largest print used elsewhere in the instrument or conveyance. The  
30 restriction shall be construed to regulate or prohibit the display of the  
31 United States or North Carolina flag only if the restriction  
32 specifically states: **"THIS DOCUMENT REGULATES OR  
33 PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED  
34 STATES OF AMERICA OR STATE OF NORTH  
35 CAROLINA"**.

36 This subdivision shall apply to owners of property who display the flag of  
37 the United States or North Carolina on property owned exclusively by them  
38 and does not apply to common areas, easements, rights-of-way, or other  
39 areas owned by others.

- 40 (2) Regulate or prohibit the indoor or outdoor display of a political sign by an  
41 association member on property owned exclusively by the member, unless:  
42 a. For restrictions registered prior to October 1, 2005, the restriction  
43 specifically uses the term "political signs".  
44 b. For restrictions registered on or after October 1, 2005, the restriction  
45 shall be written on the first page of the instrument or conveyance in  
46 print that is in boldface type, capital letters, and no smaller than the  
47 largest print used elsewhere in the instrument or conveyance. The  
48 restriction shall be construed to regulate or prohibit the display of  
49 political signs only if the restriction specifically states: **"THIS  
50 DOCUMENT REGULATES OR PROHIBITS THE DISPLAY  
51 OF POLITICAL SIGNS"**.

1 Even when display of a political sign is permitted under this subdivision, an  
2 association (i) may prohibit the display of political signs earlier than 45 days  
3 before the day of the election and later than seven days after an election day,  
4 and (ii) may regulate the size and number of political signs that may be  
5 placed on a member's property if the association's regulation is no more  
6 restrictive than any applicable city, town, or county ordinance that regulates  
7 the size and number of political signs on residential property. If the local  
8 government in which the property is located does not regulate the size and  
9 number of political signs on residential property, the association shall permit  
10 at least one political sign with the maximum dimensions of 24 inches by 24  
11 inches on a member's property. For the purposes of this subdivision,  
12 "political sign" means a sign that attempts to influence the outcome of an  
13 election, including supporting or opposing an issue on the election ballot.  
14 This subdivision shall apply to owners of property who display political  
15 signs on property owned exclusively by them and does not apply to common  
16 areas, easements, rights-of-way, or other areas owned by others. (2005-422,  
17 s. 8; 2006-226, s. 15(b).)

18  
19 **§ 47F-3-122. Irrigation of landscaping.**

20 Notwithstanding any provision in any declaration of covenants, no requirement to irrigate  
21 landscaping shall be construed to:

- 22 (1) Require the irrigation of landscaping, during any period in which the U.S.  
23 Drought Monitor, as defined in G.S. 143-350, or the Secretary of  
24 Environment and Natural Resources has designated an area in which the  
25 association is located as an area of severe, extreme, or exceptional drought  
26 and the Governor, a State agency, or unit of local government has imposed  
27 water conservation measures applicable to the area unless:
- 28 a. For declarations of covenants registered prior to October 1, 2008, the  
29 covenant specifically requires the irrigation of landscaping  
30 notwithstanding water conservation measures imposed by the  
31 Governor, a State agency, or unit of local government. The  
32 association may not fine or otherwise penalize an owner of land for  
33 violation of an irrigation requirement during a period of a drought as  
34 designated under this subdivision, unless the covenant specifically  
35 authorizes fines or other penalties.
- 36 b. For covenants registered on or after October 1, 2008, the covenant  
37 must specifically state that any requirement to irrigate landscaping is  
38 suspended to the extent the requirement would otherwise be  
39 prohibited during any period in which the Governor, a State agency,  
40 or unit of local government has imposed water conservation  
41 measures. The association may not fine or otherwise penalize an  
42 owner of land for violation of an irrigation requirement during a  
43 drought designated under this subdivision, unless the covenant  
44 authorizes the fines or other penalties. This authorization must be  
45 written on the first page of the covenant in print that is in boldface  
46 type, capital letters, and no smaller than the largest print used  
47 elsewhere in the declarations of covenants.
- 48 (2) For purposes of this section, the term "landscaping" includes lawns, trees,  
49 shrubbery, and other ornamental or decorative plants. (2008-143, s. 19(b).)