

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 806
Apr 16, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40380-MQ-120

Short Title: HOA/Condo Crime & Fidelity Insurance Policies. (Public)

Sponsors: Representatives Saine and Strickland (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HOMEOWNERS ASSOCIATIONS, CONDOMINIUM ASSOCIATIONS, AND THEIR MANAGEMENT COMPANIES TO ACQUIRE CRIME AND FIDELITY INSURANCE POLICIES TO PROTECT THE ASSOCIATIONS' MEMBERSHIP FROM LOSS DUE TO THE ILLEGAL CONDUCT OF THE ASSOCIATION, THE EXECUTIVE BOARD AND ITS EMPLOYEES, OR A MANAGEMENT COMPANY, AND TO REQUIRE ANNUAL FINANCIAL AUDITS TO BE PERFORMED BY HOMEOWNERS ASSOCIATIONS AND CONDOMINIUM ASSOCIATIONS.

The General Assembly of North Carolina enacts:

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

"§ 47C-1-102. Applicability.

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-113.1 (Crime and Fidelity Policy Required), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

...."

SECTION 2. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"§ 47C-3-113.1. Crime and fidelity policy required.

(a) Executive Board Coverage. – Any unit owners' association with annual assessments for common expenses of at least twenty-five thousand dollars (\$25,000) or with twenty-five thousand dollars (\$25,000) or more of total funds invested or on deposit shall obtain and



1 maintain, to the extent available, a crime and fidelity insurance policy. The crime and fidelity
2 insurance policy shall insure the unit owners' association against losses resulting from theft or
3 dishonesty committed by the officers and members of the executive board, members of
4 association committees, past and present, and persons employed by the unit owners' association.
5 The crime and fidelity policy shall be written by an insurance company authorized to write a
6 crime and fidelity policy in the State and shall provide coverage in the amount of one hundred
7 twenty-five percent (125%) of the total funds on deposit or invested by the executive board plus
8 one hundred twenty-five percent (125%) of the annual budget of the unit owners' association as
9 of the last day of the association's last fiscal year, but is not required to be greater than one million
10 dollars (\$1,000,000). The executive board shall obtain the crime and fidelity policy on behalf of
11 the unit owners' association.

12 (b) Management Agent or Company Coverage. – Any management agent or company
13 hired by a unit owners' association shall at all times be covered by a crime and fidelity insurance
14 policy. For purposes of this section, a management agent or company is any person who, for
15 compensation or the expectation thereof, performs two or more of the following:

- 16 (1) Acts with the authority of a unit owners' association in its business, legal,
17 financial, or other transactions with association members and nonmembers.
- 18 (2) Executes the resolutions and decisions of the government of a unit owners'
19 association or, with the authority of the association, enforces the rights of the
20 association secured by statute, contract, covenant, rule, or bylaw.
- 21 (3) Collects, disburses, or otherwise exercises dominion or control over money or
22 other property belonging to a unit owners' association.
- 23 (4) Prepares budgets, financial statements, or other financial reports for a unit
24 owners' association.
- 25 (5) Negotiates contracts or otherwise coordinates or arranges for services or the
26 purchase of property and goods for or on behalf of a unit owners' association.
- 27 (6) Offers or solicits to perform any of the acts or services in subdivisions (1)
28 through (5) of this subsection on behalf of a unit owners' association.

29 The crime and fidelity policy shall provide coverage in the amount of the total annual budgets
30 of all clients of the management agent or company, but is not required to be greater than two
31 million dollars (\$2,000,000). The crime and fidelity policy shall be written by an insurance
32 company authorized to write a crime and fidelity policy in this State and shall cover the unit
33 owners' association manager and all of the manager's employees and protect all or a portion of
34 the association funds in the custody of the association manager or association employees acting
35 under the association manager's supervision.

36 (c) Notice of Inability to Comply. – If the insurance policy described in this section is
37 not reasonably or commercially available, the association shall promptly each year cause notice
38 of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners."

39 **SECTION 3.** G.S. 47C-3-118 reads as rewritten:

40 **"§ 47C-3-118. Association records.**

41 (a) The association shall keep financial records sufficiently detailed to enable the
42 association to comply with this chapter. All financial and other records, including records of
43 meetings of the association and executive board, shall be made reasonably available for
44 examination by any unit owner and the unit owner's authorized agents as required by the bylaws
45 and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the
46 bylaws do not specify particular records to be maintained, the association shall keep accurate
47 records of all cash receipts and expenditures and all assets and liabilities. In addition to any
48 specific information that is required by the bylaws to be assembled and reported to the unit
49 owners at specified times, the association shall make an annual income and expense statement
50 and balance sheet available to all unit owners at no charge and within 75 days after the close of
51 the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive~~

1 compilation, review, or audit of the association's books and records for the current or immediately
2 preceding fiscal year may be required by a vote of the majority of the executive board or by the
3 affirmative vote of a majority of the unit owners present and voting in person or by proxy at any
4 annual meeting or any special meeting duly called for that purpose.

5"

6 **SECTION 4.** Article 3 of Chapter 47C of the General Statutes is amended by adding
7 a new section to read:

8 **"§ 47C-3-118.1. Financial audits.**

9 The executive board shall provide for an annual independent financial audit conducted by a
10 certified public accountant licensed pursuant to Chapter 93 of the General Statutes of the unit
11 owners' association if the unit owners' association has annual revenues or expenditures or total
12 account balances of one hundred fifty thousand dollars (\$150,000) or more. The audit shall be
13 completed no later than one year after the end of the fiscal year of the unit owners' association
14 and shall be made available upon request to the unit owners within 30 days after its completion."

15 **SECTION 5.** G.S. 47F-1-102 reads as rewritten:

16 **"§ 47F-1-102. Applicability.**

17 ...

18 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104
19 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws),
20 G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through
21 (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers),
22 G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments
23 for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community
24 privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-113.1 (Crime and Fidelity Policy
25 Required), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for
26 assessments), G.S. 47F-3-118 (Association records), G.S. 47F-3-118.1 (Financial Audits), and
27 G.S. 47F-3-121 (American and State flags and political sign displays), and G.S. 47F-3-104
28 (Transfer of Special Declarant Rights) apply to all planned communities created in this State
29 before January 1, 1999, unless the articles of incorporation or the declaration expressly provides
30 to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned
31 communities created in this State before January 1, 1999. These sections apply only with respect
32 to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing
33 provisions of the declaration, bylaws, or plats and plans of those planned communities.
34 G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before
35 January 1, 1999, to the extent necessary in construing any of the preceding sections.

36"

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

39 **"§ 47F-3-113.1. Crime and fidelity policy required.**

40 (a) Executive Board Coverage. – Any lot owners' association with annual assessments
41 for common expenses of twenty-five thousand dollars (\$25,000) or with twenty-five thousand
42 dollars (\$25,000) or more of total funds invested or on deposit shall obtain and maintain, to the
43 extent available, a crime and fidelity insurance policy. The crime and fidelity insurance policy
44 shall insure the unit owners' association against losses resulting from theft or dishonesty
45 committed by the officers and members of the executive board, members of association
46 committees, past and present, and persons employed by the lot owners' association. The crime
47 and fidelity policy shall be written by an insurance company authorized to write a crime and
48 fidelity policy in the State and shall provide coverage in the amount of one hundred twenty-five
49 percent (125%) of the total funds on deposit or invested by the executive board plus one hundred
50 twenty-five percent (125%) of the annual budget of the lot owners' association as of the last day
51 of the association's last fiscal year, but is not required to be greater than one million dollars

1 (\$1,000,000). The executive board shall obtain the crime and fidelity policy on behalf of the lot
 2 owners' association.

3 (b) Management Agent or Company Coverage. – Any management agent or company
 4 hired by a lot owners' association shall at all times be covered by a crime and fidelity insurance
 5 policy. For purposes of this section, a management agent or company is any person who, for
 6 compensation or the expectation thereof, performs two or more of the following:

- 7 (1) Acts with the authority of a lot owners' association in its business, legal,
 8 financial, or other transactions with association members and nonmembers.
 9 (2) Executes the resolutions and decisions of the government of a lot owners'
 10 association or, with the authority of the association, enforces the rights of the
 11 association secured by statute, contract, covenant, rule, or bylaw.
 12 (3) Collects, disburses, or otherwise exercises dominion or control over money or
 13 other property belonging to a lot owners' association.
 14 (4) Prepares budgets, financial statements, or other financial reports for a lot
 15 owners' association.
 16 (5) Negotiates contracts or otherwise coordinates or arranges for services or the
 17 purchase of property and goods for or on behalf of a lot owners' association.
 18 (6) Offers or solicits to perform any of the acts or services in subdivisions (1)
 19 through (5) of this subsection on behalf of a lot owners' association.

20 The crime and fidelity policy shall provide coverage in the amount of the total annual budgets
 21 of all clients of the management agent or company, but is not required to be greater than two
 22 million dollars (\$2,000,000). The crime and fidelity policy shall be written by an insurance
 23 company authorized to write a crime and fidelity policy in this State and shall cover the lot
 24 owners' association manager and all of the manager's employees and protect all or a portion of
 25 the association funds in the custody of the association manager or association employees acting
 26 under the association manager's supervision.

27 (c) Notice of Inability to Comply. – If the insurance policy described in this section is
 28 not reasonably or commercially available, the association shall promptly each year cause notice
 29 of that fact to be hand-delivered or sent prepaid by United States mail to all lot owners."

30 **SECTION 7.** G.S. 47F-3-118 reads as rewritten:

31 **"§ 47F-3-118. Association records.**

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

47"

48 **SECTION 8.** Article 3 of Chapter 47F of the General Statutes is amended by adding
 49 a new section to read:

50 **"§ 47F-3-118.1. Financial audits.**

1 The executive board shall provide for an annual independent financial audit conducted by a
2 certified public accountant licensed pursuant to Chapter 93 of the General Statutes of the
3 association if the owners' association has annual revenues or expenditures or total account
4 balances of one hundred fifty thousand dollars (\$150,000) or more. The audit shall be completed
5 no later than one year after the end of the fiscal year of the association and shall be made available
6 upon request to the lot owners within 30 days after its completion."

7 **SECTION 9.** This act becomes effective January 1, 2020. The audit requirements in
8 Section 6 and Section 8 apply to fiscal years beginning on or after the effective date of this act.