



# HOUSE BILL 920: Condominium Association Changes.

2019-2020 General Assembly

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<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 18, 2020
<b>Introduced by:</b>	Reps. D. Hall, K. Hall, Hardister	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	Second Edition		Staff Attorney

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**OVERVIEW:** *House Bill 920 makes various changes to the Condominium Act.*

**CURRENT LAW:** Article 2 of Chapter 47C (North Carolina Condominium Act) of the General Statutes governs the Creation, alteration, and termination of condominiums.

## **BILL ANALYSIS:**

**Section 1** of House Bill 920 removes duplicative language requiring a licensed architect or engineer to certify the contents of the plat/plan for the condo. The same requirement for architect/engineer certification is in this same statute (subdivision 6).

In addition, Section 1 specifies the items to be included in the architect/engineer's certification of what is depicted by the condominium plat/plan, including: 1) locations and dimensions of the horizontally limiting boundaries of each unit lying within or coinciding with the boundaries of the building in which the unit is located; 2) the location of any vertically limiting unit boundaries, with reference to established datum; and 3) an identifying number for each unit.

This section also specifies the statutory requirements with which a professional land surveyor must certify the plat to be in compliance. In addition, Section 1 requires liberal construction in favor of the validity of statutory provisions governing the creation of a condominium and instruments recorded pursuant thereto. The section also makes other technical corrections.

**Section 2** amends the statutory requirements for the contents of a condo declaration to make technical corrections and to:

- 1) Clarify the manner in which the declaration may define a unit.
- 2) Provide that when the declaration provides no date by which development rights or declarant rights must be exercised, those rights must be exercised by July 1, 2027, or 7 years from the date the declaration was recorded, whichever is later.
- 3) Provide a mechanism for exercising an option provided in the declaration to extend the time for exercising development or special declarant rights to no more than 10 years, by vote of owners to which at least 67% of the votes in the association are allocated.

**Section 3.(a)** creates a presumption in favor of valid establishment of a condominium and valid amendment of the declaration if these are done in compliance with statutory requirements, and provides that the executive board may propose an amendment to the declaration to cure defects, conform to applicable standards for loans secured by mortgages or deeds of trust on condominium units, or to comply with applicable laws or regulations, or to make a reasonable accommodation for persons with disabilities under applicable law, or for any other purpose permitted in the declaration or by Chapter 47C. In a meeting

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of the owners called to consider ratification of the amendment, there would be no requirement that a quorum be present.

This section also provides that once the amendment is recorded in the office of the register of deeds in the county where the condominium is located, the correction relates back to the date the declaration was originally recorded.

**Section 3.(b)** adds a new section to provide a mechanism for a unit owners' association to seek judicial reformation of a declaration to correct ambiguities, errors, inconsistencies in condominium instruments that give rise to legal and other disputes pertaining to the legal rights and responsibilities of the association or individual unit owners.

The clerk of superior court would be authorized to enter a judgment for reformation of the declaration in whole or in part based solely on the complaint if the following requirements are met:

- 1) At least three good-faith attempts were made to convene an association meeting to amend the declaration.
- 2) A declarant who still owns a unit has joined in the complaint of the unit owners' association.
- 3) A copy of the complaint was served on all unit owners and all beneficiaries of a deed of trust or mortgagees of record for condominium units.
- 4) The complaint notified recipients of their right to object to or dispute the petition and the time and manner in which they must do so, and that if they fail to respond the clerk can grant the relief sought.
- 5) No written response objecting to or disputing the complaint was received from any interested party within 45 days of the last to receive service.

In the event any interested party objects to or disputes the complaint within 45 days after the last to receive service, the action would be resolved before a superior court judge.

This section would also provide that any collateral action contesting a judgment ordering reformation or correction must be commenced within one year from the date of entry of the judgment.

**Section 4** conforms existing statutory provisions governing execution and recordation of a declaration to conform with changes made in Section 1 of the bill.

**Section 5** replaces an existing statutory provision for encroachment easements with one that recognizes actual as-constructed boundaries of units as surveying monuments.

**Section 6** deems title to a unit marketable if, in the four years following recordation of the condominium declaration, plats or plans, and deed to the unit, no challenge has been brought to the validity of the documents establishing the condominium.

**Sections 7, 8, 9, and 10** amend provisions in the Condominium Act to conform with corresponding provisions in the Planned Community Act governing executive board members and officers, notice requirements for association meetings, reduced quorum requirements for meetings after a meeting at which the lack of a quorum prevented business from being conducted, and assessments against a unit for common expense caused by the misconduct of an occupant of that unit.

**EFFECTIVE DATE:** This act would be effective when it becomes law.

*Tawanda Foster, counsel to House Judiciary Committee, substantially contributed to this summary.*