



HOUSE BILL 920: Condominium Association Changes.

2019-2020 General Assembly

Committee:		Date:	October 14, 2020
Introduced by:		Prepared by:	Bill Patterson
Analysis of:	S.L. 2020-52		Staff Attorney

OVERVIEW: *S.L. 2020-52 amends the North Carolina Condominium Act to:*

- *Specify what must be contained in an architect/engineer's certification of what the condominium plat/plan depicts, and in a professional land surveyor's certification of the statutory requirements that have been met by the plat.*
- *Amend the statutory requirements for the contents of a condominium declaration.*
- *Limit the time within which any development or declarant rights must be exercised if not specified in the declaration.*
- *Permit the time limit for exercising any development or declarant right as set forth in the declaration to be extended for a period of not more than 10 years by consent of owners of units to which at least 67% of the association votes are allocated.*
- *Require liberal construction of statutory provisions governing establishment of a condominium in favor of its validity.*
- *Specify purposes for which the executive board may propose a corrective amendment to the declaration and provide that upon recordation in the office of the register of deeds for the county where the condominium is located, any such correction relates back to and is effective as of the date the declaration was originally recorded.*
- *Provide a procedure for judicial reformation of a declaration to correct certain ambiguities, errors, inconsistencies in condominium instruments, and requiring any collateral action challenging a judgment ordering reformation to be brought within one year of the entry of judgment.*
- *Amend provisions governing encroachment easements.*
- *Provide that when a declarant's failure to substantially comply with the Condominium Act in establishing a condominium is due to defects in the drafting, execution, or recordation of the declaration, plats or plans, a condominium unit's title will be deemed marketable if there is no legal challenge to the validity of the documents establishing the condominium within four years of their recordation.*
- *Conform provisions in the Condominium Act to corresponding provisions in the Planned Community Act relating to executive board members and officers, meeting notice and quorum requirements, and assessments against a unit for common expenses caused by a unit occupant's misconduct.*

Jeffrey Hudson
Director

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The act's provisions for judicial reformation of a declaration became effective on October 1, 2020 and apply to actions filed on or after that date. The remainder of the act became effective on June 24, 2020.

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 S.L. 2020-52 removes duplicative language requiring a licensed architect or engineer to certify the contents of the plat/plan for the condominium.

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: the 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; the locations of any vertically limiting unit boundaries, with reference to established datum; and an identifying number for each unit.

Section 1 also specifies the statutory requirements that a professional land surveyor must certify the condominium plat as having met, requires liberal construction in favor of the validity of statutory provisions governing the creation of a condominium and instruments recorded pursuant thereto, and makes other technical corrections.

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

- Clarify the manner in which the declaration may define a unit.
- Provide that when the declaration does not state a 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.
- Provide that the time limit set forth in the declaration for exercising any development right or special declarant right may be extended for a period not to exceed 10 years by consent of the owners of units 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, to conform to applicable standards for loans secured by mortgages or deeds of trust on condominium units, to comply with applicable laws or regulations, 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 of the owners called to consider ratification of the amendment, there is 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) provides a mechanism by which a unit owners' association can 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.

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The clerk of superior court is authorized to enter a judgment for reformation of the declaration in whole or in part based solely on the complaint if all of 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 mortgages 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 by 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 must be resolved before a superior court judge.

This section also provides 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 act.

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, there has been no legal challenge 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: Section 3.(b) of the act became effective on October 1, 2020 and applies to actions filed on or after that date. The remainder of the act became effective on June 30, 2020.

Staff Attorney Tawanda Foster substantially contributed to this summary.