



2021-2022 General Assembly

# SENATE BILL 278: Entireties Property Expense Reimbursement/Condo Act Changes/Marketable Title Act Changes.

<b>Committee:</b>		<b>Date:</b>	June 15, 2022
<b>Introduced by:</b>	Sens. Galey, Britt	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	Second Edition		Staff Attorney

## OVERVIEW: *Senate Bill 278 would:*

- *Clarify the right of one spouse to reimbursement from the other spouse for expenditures made with respect to property during the time that the property is held as tenants by the entirety, as recommended by the Family Law Section of the North Carolina Bar Association.*
- *Require certain information to be included in a condominium declaration before recordation.*
- *Clarify the applicability of certain provisions of the Condominium Act to condominiums created on or before October 1, 1986.*
- *Amend the Marketable Title Act to exempt provisions contained in a declaration applicable to certain condominium, cooperatives, and planned communities.*

## CURRENT LAW AND BILL ANALYSIS:

### Section 1 – Reimbursement of Expenditures Made by One Spouse with Respect to Entireties Property

S.L. 2020-50 made changes and technical corrections to the General Statutes concerning real property law and created Article 5 of Chapter 41 of the General Statutes entitled "Tenancy by the Entirety," as recommended by the North Carolina Bar Association.

Currently G.S. 41-61 provides that neither spouse holding property as tenants by the entirety is entitled to reimbursement of expenditures made with respect to the property while the tenancy by the entirety exists, and that the law governing tenancy in common determines the allocation of responsibility for expenditures for the property when the tenancy by the entirety is converted to a tenancy in common, unless otherwise directed in a court order.

### **Section 1** would amend G.S. 41-61 to provide that:

- Expenses incurred by one spouse with respect to property held as tenants by the entirety for which there is no right of reimbursement from the other spouse include payments made for recurring expenses, improvements, and payments on indebtedness secured by a lien on the property.
- When the tenancy by the entirety has been terminated by death, neither the surviving spouse nor the personal representative of the deceased spouse is entitled to reimbursement from the other for expenditures made with respect to the property during the existence of the tenancy by the entirety.
- Nothing in this section:

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# Senate Bill 278

Page 2

- Applies in an equitable distribution proceeding or limits the court's power in an equitable distribution proceeding.
- Renders unenforceable any otherwise valid and enforceable provisions in a premarital agreement, postmarital agreement, or promissory note given by one spouse to the other.
- Affects any otherwise valid and enforceable lien or judgment.

## **Section 2 - Information Required to Be Included in a Condominium Declaration before Recordation**

Section 2.(a) would provide that a condominium unit not specifically described by an upper limiting boundary referring to established datum is deemed to include so much of the land and air above the unit as would be included for a noncondominium parcel of land under applicable common or statutory law, and that a condominium unit not specifically described by a lower limiting elevation boundary with reference to established datum is deemed to include so much of the land and air below the unit as would be included for a noncondominium parcel of land under applicable common or statutory law.

Section 2.(b) would provide that a declaration or amendment to a declaration adding units to a condominium may not be recorded unless there is a recorded certificate of an architect or engineer attesting that all structural components and mechanical systems of all buildings containing or comprising the new units are substantially completed in accordance with a licensed architect's or registered engineer's building design plans. The plats or plans for the condominium required to be filed by the declarant with the register of deeds would not be required to depict the structural components and mechanical systems of buildings.

Section 2 would apply to declarations recorded on or after the effective date of this act.

## **Section 3 - Condominium Act Provisions Applicable to Condominiums Created on or before October 1, 1986**

Chapter 47C of the General Statutes, the North Carolina Condominium Act, applies to all condominiums created in this State after October 1, 1986. In addition, provisions of the Act enumerated in G.S. 47C-1-102(a) apply to condominiums created on or before October 1, 1986, unless the declaration expressly provides to the contrary. These 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 3** would provide that those sections of the Condominium Act enumerated in G.S. 47C-1-102(a) apply to condominiums created on or before October 1, 1986, notwithstanding any contrary provisions in the condominium declaration, bylaws, or articles of incorporation, and notwithstanding any references in those documents to Chapter 47A. Section 2 would also repeal the current statutory language providing that those sections do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

## **Section 4 - Marketable Title Act Exemption for Condominiums, Cooperatives and Planned Communities**

Under the Marketable Title Act, Chapter 47B of the General Statutes, if a person claims title to real property under a chain of record title for 30 years, and no other person has filed a notice of any claim of interest in the real property during the 30-year period, then all conflicting claims based upon any title transaction prior to the 30-year period are extinguished, except for claims subject to one of the exemptions set forth in G.S. 47B-3.

G.S. 47B-3(13) exempts the following from extinguishment by operation of the Marketable Title Act:

# Senate Bill 278

Page 3

"Covenants applicable to a general or uniform scheme of development which restrict the property to residential use only, provided said covenants are otherwise enforceable. The excepted covenant may restrict the property to multi-family or single-family residential use or simply to residential use. Restrictive covenants other than those mentioned herein which limit the property to residential use only are not excepted from the provisions of Chapter 47B."

Other than rights granted under covenants exempted by G.S. 47B-3(13), rights arising under declarations applicable to condominiums, cooperatives, and planned communities are not currently exempt from the Marketable Title Act.

**Section 4** would enact a new subdivision G.S. 47B-3(14) that would exempt from the Marketable Title Act provisions contained in a declaration of covenants applicable to any of the following:

1. A condominium created under Chapter 47A or Chapter 47C;
2. A cooperative as defined in Chapter 47F;<sup>1</sup> or
3. A planned community, other than one in which all lots are restricted to nonresidential purposes, whenever created, to which any provisions in Chapter 47F apply. For a planned community created before January 1, 1999, the exemption would only apply if the community is governed by an owners' association that is in existence as of July 1, 2022.

Section 4 would become effective July 1, 2022.

**EFFECTIVE DATE:** Except as otherwise provided, this act would be effective when it becomes law.

*LAD Staff Attorneys Kristen Harris and Brad Krehely substantially contributed to this summary.*

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<sup>1</sup> G.S. 47F-1-103(8) defines "cooperative" to mean "real estate owned by a corporation, trust, trustee, partnership, or unincorporated association, where the governing instruments of that organization provide that each of the organization's members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate."