



SENATE BILL 278: Property/Family Law-Reimburse Property Expenditures.

2021-2022 General Assembly

Committee:		Date:	July 7, 2022
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2022-12		

OVERVIEW: *S.L. 2022-12 does the following:*

- *Clarifies 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. (Section 1)*
- *Requires certain information to be included in a condominium declaration before it is recorded. (Section 2)*
- *Clarifies the applicability of certain provisions of the Condominium Act to condominiums created on or before October 1, 1986. (Section 3)*
- *Exempts provisions contained in a declaration of covenants applicable to condominiums, cooperatives, and most planned communities from being extinguished by operation of the Marketable Title Act. (Section 4)*

The Marketable Title Act changes became effective July 1, 2022. The remainder of the act became effective June 29, 2022, and the content requirement for condominium declarations applies to declarations recorded on or after that date.

CURRENT LAW AND BILL ANALYSIS:

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

Under current law neither of two spouses 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. When a tenancy by the entirety is converted to a tenancy in common, responsibility for such expenditures is determined by the law governing tenancy in common unless a court order directs otherwise.

Section 1 of the act provides that:

- One spouse is not entitled to reimbursement from the other spouse for expenditures made with respect to property held as tenants by the entirety for recurring expenses, improvements, and payments on indebtedness secured by a lien on the property.
- When a 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.

Jeffrey Hudson
Director



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- These provisions do not:
 - Apply in equitable distribution proceedings or limit the court's power in such proceedings.
 - Render unenforceable any otherwise valid and enforceable provisions in a premarital agreement, postmarital agreement, or promissory note given by one spouse to the other.
 - Affect any otherwise valid and enforceable lien or judgment.

Section 2 – Information Required to Be Included in a Condominium Declaration before Recordation

Section 2(a) of the act provides 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) of the act provides that a declaration or amendment to a declaration adding units to a condominium cannot 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 are not required to depict the structural components and mechanical systems of buildings.

Section 2 applies to declarations recorded on or after June 29, 2022.

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

The North Carolina Condominium Act currently applies to all condominiums created in this State after October 1, 1986. Older condominiums are subject to the Unit Ownership Act, except for specified provisions of the Condominium Act that also apply to them unless their declarations expressly provide to the contrary. The specified provisions of the Condominium Act only apply to older condominiums with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the condominium declarations, bylaws, or plats or plans.

Section 3 of the act provides that specified sections of the Condominium Act apply to older condominiums regardless of whether their declaration, bylaws, or articles of incorporation contain any contrary provisions or contain references to the Unit Ownership Act.

Section 3 also repeals the immunity of provisions in older condominium declarations, bylaws, or plats or plans to invalidation by applicable provisions of the Condominium Act, and makes a conforming change to the Unit Ownership Act.

Section 4 – Marketable Title Act Exemption for Condominiums, Cooperatives and Planned Communities

Under the Marketable Title Act,¹ 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, unless the claim is statutorily exempt from extinguishment.

¹ Chapter 47B of the General Statutes.

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One of the exemptions from extinguishment by operation of the Marketable Title Act applies to:

"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."²

Under current law as recently construed by the North Carolina Court of Appeals,³ this exemption is limited to covenants restricting the use of real property to residential use only, and does not protect other covenants from being extinguished by operation of the Marketable Title Act.

Section 4 provides that provisions contained in a declaration of covenants applicable to any of the following are exempt from being extinguished by operation of the Marketable Title Act:

1. A condominium created under the Unit Ownership Act or Condominium Act;
2. A cooperative as defined in the Planned Community Act;⁴ or
3. A planned community, other than one in which all lots are restricted to nonresidential purposes, whenever created, to which any provisions in the Planned Community Act apply. (For a planned community created before January 1, 1999, this exemption only applies if it is governed by an owners' association that was in existence as of July 1, 2022.)

EFFECTIVE DATE: Section 4 of the act became effective July 1, 2022. The remainder of the act became effective June 29, 2022, and Section 2 of the act applies to declarations recorded on or after that date.

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

² G.S. 47B-3(13).

³ C Investments 2, LLC v. Auger, 277 N.C. App. 420, 2021-NCCOA-209, review allowed, 867 S.E.2d 669 (2022).

⁴ As defined in the Planned Community Act, a cooperative is "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." G.S. 47F-1-103(8).