

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 801  
House Committee Substitute Favorable 8/17/98

Short Title: N.C. Planned Community Act.

(Public)

Sponsors:

Referred to:

April 10, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY  
3 ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to read:

6 **"CHAPTER 47E.**

7 **"NORTH CAROLINA PLANNED COMMUNITY ACT.**

8 **"ARTICLE 1.**

9 **"GENERAL PROVISIONS.**

10 **"§ 47E-1-101. Short title.**

11 This Chapter shall be known and may be cited as the North Carolina Planned  
12 Community Act.

13 **"§ 47E-1-102. Applicability.**

14 (a) This Chapter applies to all planned communities within this State except as  
15 provided in subsection (b) of this section.

16 (b) This Chapter does not apply to a planned community created within this State:

17 (1) Which contains no more than 20 lots (including all lots which may be  
18 added or created by the exercise of development rights) unless the

1 declaration provides or is amended to provide that this Chapter does  
2 apply to that planned community; or

3 (2) In which all lots are restricted exclusively to nonresidential purposes,  
4 unless the declaration provides or is amended to provide that this  
5 Chapter does apply to that planned community.

6 (c) This Chapter does not apply to planned communities or lots located outside  
7 this State.

8 (d) Any planned community created prior to the effective date of this Chapter may  
9 elect to make the provisions of this Chapter applicable to it by amending its declaration to  
10 provide that this Chapter shall apply to that planned community.

11 **§ 47E-1-103. Definitions.**

12 In the declaration and bylaws, unless specifically provided otherwise or the context  
13 otherwise requires, and in this Chapter:

14 (1) Reserved.

15 (2) 'Allocated interests' means the common expense liability and votes in  
16 the association allocated to each lot.

17 (3) 'Association' or 'owners' association' means the association organized as  
18 allowed under North Carolina law, including G.S. 47E-3-101.

19 (4) 'Common elements' means any real estate within a planned community  
20 owned or leased by the association, other than a lot.

21 (5) 'Common expenses' means expenditures made by or financial liabilities  
22 of the association, together with any allocations to reserves.

23 (6) 'Common expense liability' means the liability for common expenses  
24 allocated to each lot as permitted by this Chapter, the declaration or  
25 otherwise by law.

26 (7) 'Condominium' means real estate, as defined and created under Chapter  
27 47C.

28 (8) 'Cooperative' means real estate owned by a corporation, trust, trustee,  
29 partnership, or unincorporated association, where the governing  
30 instruments of that organization provide that each of the organization's  
31 members, partners, stockholders, or beneficiaries is entitled to exclusive  
32 occupancy of a designated portion of that real estate.

33 (9) 'Declarant' means any person or group of persons acting in concert who  
34 (i) as part of a common promotional plan, offers to dispose of the  
35 person's or group's interest in a lot not previously disposed of, or (ii)  
36 reserves or succeeds to any special declarant right.

37 (10) 'Declaration' means any instruments, however denominated, that create  
38 a planned community and any amendments to those instruments.

39 (11) Reserved.

40 (12) Reserved.

41 (13) 'Executive board' means the body, regardless of name, designated in the  
42 declaration to act on behalf of the association.

43 (14) Reserved.

- 1           (15) Reserved.
- 2           (16) 'Leasehold planned community' means a planned community in which  
3           all or a portion of the real estate is subject to a lease, the expiration or  
4           termination of which will terminate the planned community or reduce  
5           its size.
- 6           (17) 'Lessee' means the party entitled to present possession of a leased lot  
7           whether lessee, sublessee, or assignee.
- 8           (18) 'Limited common element' means a portion of the common elements  
9           allocated by the declaration or by operation of law for the exclusive use  
10           of one or more but fewer than all of the lots.
- 11           (19) 'Lot' means a physical portion of the planned community designated for  
12           separate ownership or occupancy by a lot owner.
- 13           (20) 'Lot owner' means a declarant or other person who owns a lot, or a  
14           lessee of a lot in a leasehold planned community whose lease expires  
15           simultaneously with any lease the expiration or termination of which  
16           will remove the lot from the planned community, but does not include a  
17           person having an interest in a lot solely as security for an obligation.
- 18           (21) 'Master association' means an organization described in G.S. 47E-2-120,  
19           whether or not it is also an association described in G.S. 47E-3-101.
- 20           (22) 'Person' means a natural person, corporation, business trust, estate, trust,  
21           partnership, association, joint venture, government, governmental  
22           subdivision or agency, or other legal or commercial entity.
- 23           (23) 'Planned community' means real estate with respect to which any  
24           person, by virtue of that person's ownership of a lot, is expressly  
25           obligated by a declaration to pay real property taxes, insurance  
26           premiums, or other expenses to maintain, improve, or benefit other lots  
27           or other real estate described in the declaration. For purposes of this act,  
28           neither a cooperative nor a condominium is a planned community, but  
29           real estate comprising a condominium or cooperative may be part of a  
30           planned community. 'Ownership of a lot' does not include holding a  
31           leasehold interest of less than 20 years in a lot, including renewal  
32           options.
- 33           (24) 'Purchaser' means any person, other than a declarant or a person in the  
34           business of selling real estate for the purchaser's own account, who by  
35           means of a voluntary transfer acquires a legal or equitable interest in a  
36           lot, other than (i) a leasehold interest (including renewal options) of less  
37           than 20 years, or (ii) as security for an obligation.
- 38           (25) 'Reasonable attorneys' fees' means attorneys' fees reasonably incurred  
39           without regard to any limitations on attorneys' fees which otherwise  
40           may be allowed by law.
- 41           (26) 'Real estate' means any leasehold or other estate or interest in, over, or  
42           under land, including structures, fixtures, and other improvements and  
43           interests which by custom, usage, or law pass with a conveyance of land

1           though not described in the contract of sale or instrument of  
2           conveyance. 'Real estate' includes parcels with or without upper or  
3           lower boundaries, and spaces that may be filled with air or water.

4           (27) Reserved.

5           (28) 'Special declarant rights' means rights reserved for the benefit of a  
6           declarant including, without limitation, any right (i) to complete  
7           improvements indicated on plats and plans filed with the declaration;  
8           (ii) to exercise any development right; (iii) to maintain sales offices,  
9           management offices, signs advertising the planned community, and  
10           models; (iv) to use easements through the common elements for the  
11           purpose of making improvements within the planned community or  
12           within real estate which may be added to the planned community; (v) to  
13           make the planned community part of a larger planned community or  
14           group of planned communities; (vi) to make the planned community  
15           subject to a master association; or (vii) to appoint or remove any officer  
16           or executive board member of the association or any master association  
17           during any period of declarant control.

18           (29) Reserved.

19 **"§ 47E-1-104. Variation.**

20           (a) Except as specifically provided in specific sections of this Chapter, the  
21           provisions of this Chapter may not be varied by the declaration or bylaws.

22           (b) The provisions of this Chapter may not be varied by agreement; however, after  
23           breach of a provision of this Chapter, rights created hereunder may be knowingly waived  
24           in writing.

25           (c) Notwithstanding any of the provisions of this Chapter, a declarant may not act  
26           under a power of attorney or proxy or use any other device to evade the limitations or  
27           prohibitions of this Chapter, the declaration, or the bylaws.

28 **"§ 47E-1-105: Reserved.**

29 **"§ 47E-1-106. Applicability of local ordinances, regulations, and building codes.**

30           A zoning, subdivision, or building code or other real estate use law, ordinance, or  
31           regulation may not prohibit a planned community or impose any requirement upon a  
32           planned community which it would not impose upon a substantially similar development  
33           under a different form of ownership or administration. Otherwise, no provision of this  
34           Chapter invalidates or modifies any provision of any zoning, subdivision, or building  
35           code or any other real estate use law, ordinance, or regulation. No local ordinance or  
36           regulation may require the recordation of a declaration prior to the date required by this  
37           Chapter.

38 **"§ 47E-1-107. Eminent domain.**

39           (a) If a lot is acquired by eminent domain, or if part of a lot is acquired by eminent  
40           domain leaving the lot owner with a remnant which may not practically or lawfully be  
41           used for any purpose permitted by the declaration, the award shall compensate the lot  
42           owner for his lot and its interest in the common element. Upon acquisition, unless the  
43           decree otherwise provides, the lot's allocated interests are automatically reallocated to the

1 remaining lots in proportion to the respective allocated interests of those lots before the  
2 taking, exclusive of the lot taken.

3 (b) Except as provided in subsection (a) of this section, if part of a lot is acquired  
4 by eminent domain, the award shall compensate the lot owner for the reduction in value  
5 of the lot. Upon acquisition, unless the decree otherwise provides, (i) that lot's allocated  
6 interests are reduced in proportion to the reduction in the size of the lot, or on any other  
7 basis specified in the declaration, and (ii) the portion of the allocated interests divested  
8 from the partially acquired lot are automatically reallocated to that lot and the remaining  
9 lots in proportion to the respective allocated interests of those lots before the taking, with  
10 the partially acquired lot participating in the reallocation on the basis of its reduced  
11 allocated interests.

12 (c) If there is any reallocation under subsection (a) or (b) of this section, the  
13 association shall promptly prepare, execute, and record an amendment to the declaration  
14 reflecting the reallocations. Any remnant of a lot remaining after part of a lot is taken  
15 under this subsection is thereafter a common element.

16 (d) If part of the common elements is acquired by eminent domain, the portion of  
17 the award attributable to the common elements taken shall be paid to the association.  
18 Unless the declaration provides otherwise, any portion of the award attributable to the  
19 acquisition of a limited common element shall be apportioned among the owners of the  
20 lots to which that limited common element was allocated at the time of acquisition based  
21 on their allocated interest in the common elements before the taking.

22 (e) The court decree shall be recorded in every county in which any portion of the  
23 planned community is located.

24 **"§ 47E-1-108. Supplemental general principles of law applicable.**

25 The principles of law and equity as well as other North Carolina statutes (including  
26 the provisions of the North Carolina Nonprofit Corporation Act) supplement the  
27 provisions of this Chapter, except to the extent inconsistent with this Chapter. When  
28 these principles or statutes are inconsistent or conflict with this Chapter, the provisions of  
29 this Chapter will control.

30 **"§§ 47E-1-109 through 47E-1-115: Reserved.**

31 **"ARTICLE 2.**

32 **"CREATION, ALTERATION, AND TERMINATION OF PLANNED**  
33 **COMMUNITIES.**

34 **"§ 47E-2-101. Creation of the planned community.**

35 A declaration creating a planned community shall be executed in the same manner as  
36 a deed, shall be recorded in every county in which any portion of the planned community  
37 is located, and shall be indexed in the Grantee index in the name of the planned  
38 community and the association and in the Grantor index in the name of each person  
39 executing the declaration.

40 **"§ 47E-2-102: Reserved.**

41 **"§ 47E-2-103. Construction and validity of declaration and bylaws.**

42 (a) All provisions of the declaration and bylaws are severable.

1       (b) The rule against perpetuities may not be applied to defeat any provision of the  
2 declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47E-3-102(a)(1).

3       (c) In the event of a conflict between the provisions of the declaration and the  
4 bylaws, the declaration prevails except to the extent the declaration is inconsistent with  
5 this Chapter.

6       (d) Title to a lot and common elements is not rendered unmarketable or otherwise  
7 affected by reason of an insubstantial failure of the declaration to comply with this  
8 Chapter. Whether a substantial failure to comply with this Chapter impairs marketability  
9 shall be determined by the law of this State relating to marketability.

10  **§§ 47E-2-104 through 47E-2-116: Reserved.**

11  **§ 47E-2-117. Amendment of declaration.**

12       (a) Except in cases of amendments that may be executed by a declarant under the  
13 terms of the declaration or by certain lot owners under G.S. 47E-2-118(b), the declaration  
14 may be amended only by affirmative vote or written agreement signed by lot owners of  
15 lots to which at least sixty-seven percent (67%) of the votes in the association are  
16 allocated, or any larger majority the declaration specifies or by the declarant if necessary  
17 for the exercise of any development right. The declaration may specify a smaller number  
18 only if all of the lots are restricted exclusively to nonresidential use.

19       (b) No action to challenge the validity of an amendment adopted pursuant to this  
20 section may be brought more than one year after the amendment is recorded.

21       (c) Every amendment to the declaration shall be recorded in every county in which  
22 any portion of the planned community is located and is effective only upon recordation.  
23 An amendment shall be indexed in the Grantee index in the name of the planned  
24 community and the association and in the Grantor index in the name of each person  
25 executing the amendment.

26       (d) Reserved.

27       (e) Amendments to the declaration required by this Chapter to be recorded by the  
28 association shall be prepared, executed, recorded, and certified in accordance with G.S.  
29 47-41.

30  **§ 47E-2-118. Termination of planned community.**

31       (a) Except in the case of taking of all the lots by eminent domain (G.S. 47E-1-  
32 107), a planned community may be terminated only by agreement of lot owners of lots to  
33 which at least eighty percent (80%) of the votes in the association are allocated, or any  
34 larger percentage the declaration specifies. The declaration may specify a smaller  
35 percentage only if all of the lots in the planned community are restricted exclusively to  
36 nonresidential uses.

37       (b) An agreement to terminate shall be evidenced by the execution of a termination  
38 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number  
39 of lot owners. The termination agreement shall specify a date after which the agreement  
40 will be void unless it is recorded before that date. A termination agreement and all  
41 ratifications thereof shall be recorded in every county in which a portion of the planned  
42 community is situated and is effective only upon recordation.

1 (c) A termination agreement may provide for sale of the common elements, but  
2 may not require that the lots be sold following termination, unless the declaration as  
3 originally recorded provided otherwise or unless all the lot owners consent to the sale. If,  
4 pursuant to the agreement, any real estate in the planned community is to be sold  
5 following termination, the termination agreement shall set forth the minimum terms of  
6 the sale.

7 (d) The association, on behalf of the lot owners, may contract for the sale of real  
8 estate in the planned community, but the contract is not binding until approved pursuant  
9 to subsections (a) and (b) of this section. Until the sale has been concluded and the  
10 proceeds thereof distributed, the association continues in existence with all powers it had  
11 before termination. Proceeds of the sale shall be distributed to lot owners and lienholders  
12 as their interests may appear, as provided in the termination agreement.

13 (e) If the real estate constituting the planned community is not to be sold following  
14 termination, title to the common elements vests in the lot owners upon termination as  
15 tenants in common in proportion to their respective interests as provided in the  
16 termination agreement.

17 (f) Following termination of the planned community, the proceeds of any sale of  
18 real estate, together with the assets of the association, are held by the association as  
19 trustee for lot owners and holders of liens on the lots as their interests may appear. All  
20 other creditors of the association are to be treated as if they had perfected liens on the  
21 common elements immediately before termination.

22 (g) If the termination agreement does not provide for the distribution of sales  
23 proceeds pursuant to subsection (d) of this section or the vesting of title pursuant to  
24 subsection (e) of this section, sales proceeds shall be distributed and title shall vest in  
25 accordance with each lot owner's allocated share of common expense liability.

26 (h) Except as provided in subsection (i) of this section, foreclosure or enforcement  
27 of a lien or encumbrance against the common elements does not of itself terminate the  
28 planned community, and foreclosure or enforcement of a lien or encumbrance against a  
29 portion of the common elements other than withdrawable real estate does not withdraw  
30 that portion from the planned community. Foreclosure or enforcement of a lien or  
31 encumbrance against withdrawable real estate does not of itself withdraw that real estate  
32 from the planned community, but the person taking title thereto has the right to require  
33 from the association, upon request, an amendment excluding the real estate from the  
34 planned community.

35 (i) If a lien or encumbrance against a portion of the real estate comprising the  
36 planned community has priority over the declaration and the lien or encumbrance has not  
37 been partially released, the parties foreclosing the lien or encumbrance may, upon  
38 foreclosure, record an instrument excluding the real estate subject to that lien or  
39 encumbrance from the planned community.

40 **"§ 47E-2-119: Reserved.**

41 **"§ 47E-2-120. Master associations.**

42 If the declaration for a planned community provides that any of the powers described  
43 in G.S. 47E-3-102 are to be exercised by or may be delegated to a profit or nonprofit

1 corporation which exercises those or other powers on behalf of one or more other planned  
2 communities or for the benefit of the lot owners of one or more other planned  
3 communities, all provisions of this act applicable to lot owners' associations apply to any  
4 such corporation.

5 **"§ 47E-2-121. Merger of consolidation of planned communities.**

6 (a) Any two or more planned communities, by agreement of the lot owners as  
7 provided in subsection (b) of this section, may be merged or consolidated into a single  
8 planned community. In the event of a merger or consolidation, unless the agreement  
9 otherwise provides, the resultant planned community is, for all purposes, the legal  
10 successor of all of the preexisting planned communities, and the operations and activities  
11 of all associations of the preexisting planned communities shall be merged or  
12 consolidated into a single association which shall hold all powers, rights, obligations,  
13 assets, and liabilities of all preexisting associations.

14 (b) An agreement of two or more planned communities to merge or consolidate  
15 pursuant to subsection (a) of this section shall be evidenced by an agreement prepared,  
16 executed, recorded, and certified by the president of the association of each of the  
17 preexisting planned communities following approval by owners of lots to which are  
18 allocated the percentage of votes in each planned community required to terminate that  
19 planned community. Any such agreement shall be recorded in every county in which a  
20 portion of the planned community is located and is not effective until recorded.

21 (c) Every merger or consolidation agreement shall provide for the reallocation of  
22 the allocated interests in the new association among the lots of the resultant planned  
23 community either (i) by stating the reallocations or the formulas upon which they are  
24 based or (ii) by stating the percentage of overall common expense liabilities and votes in  
25 the new association which are allocated to all of the lots comprising each of the  
26 preexisting planned communities, and providing that the portion of the percentages  
27 allocated to each lot formerly comprising a part of the preexisting planned community  
28 shall be equal to the percentages of common expense liabilities and votes in the  
29 association allocated to that lot by the declaration of the preexisting planned community.

30 **"§ 47E-2-122: Reserved.**

31 **"ARTICLE 3.**

32 **"MANAGEMENT OF PLANNED COMMUNITY.**

33 **"§ 47E-3-101. Organization of owners' association.**

34 A lot owners' association shall be incorporated no later than the date the first lot in the  
35 planned community is conveyed. The membership of the association at all times shall  
36 consist exclusively of all the lot owners or, following termination of the planned  
37 community, of all persons entitled to distributions of proceeds under G.S. 47E-2-118.  
38 Every association created after the effective date of this Chapter shall be organized as a  
39 nonprofit corporation.

40 **"§ 47E-3-102. Powers of owners' association.**

41 Subject to the provisions of the articles of incorporation or the declaration and the  
42 declarant's rights therein, the association may:

- 43 (1) Adopt and amend bylaws and rules and regulations;



- 1           (2)   Adopt and amend budgets for revenues, expenditures, and reserves and  
2           collect assessments for common expenses from lot owners;
- 3           (3)   Hire and discharge managing agents and other employees, agents, and  
4           independent contractors;
- 5           (4)   Institute, defend, or intervene in litigation or administrative proceedings  
6           on matters affecting the planned community;
- 7           (5)   Make contracts and incur liabilities;
- 8           (6)   Regulate the use, maintenance, repair, replacement, and modification of  
9           common elements;
- 10          (7)   Cause additional improvements to be made as a part of the common  
11          elements;
- 12          (8)   Acquire, hold, encumber, and convey in its own name any right, title, or  
13          interest to real or personal property, provided that common elements  
14          may be conveyed or subjected to a security interest only pursuant to  
15          G.S. 47E-3-112;
- 16          (9)   Grant easements, leases, licenses, and concessions through or over the  
17          common elements;
- 18          (10)  Impose and receive any payments, fees, or charges for the use, rental, or  
19          operation of the common elements other than the limited common  
20          elements and for services provided to lot owners;
- 21          (11)  Impose reasonable charges for late payment of assessments and, after  
22          notice and an opportunity to be heard, suspend privileges or services  
23          provided by the association (except rights of access to lots) during any  
24          period that assessments or other amounts due and owing to the  
25          association remain unpaid for a period of 30 days or longer;
- 26          (12)  After notice and an opportunity to be heard, impose reasonable fines or  
27          suspend privileges or services provided by the association (except rights  
28          of access to lots) for reasonable periods for violations of the declaration,  
29          bylaws, and rules and regulations of the association;
- 30          (13)  Impose reasonable charges in connection with the preparation and  
31          recordation of documents, including, without limitation, amendments to  
32          the declaration or statements of unpaid assessments;
- 33          (14)  Provide for the indemnification of and maintain liability insurance for  
34          its officers, executive board, directors, employees, and agents;
- 35          (15)  Assign its right to future income, including the right to receive common  
36          expense assessments;
- 37          (16)  Exercise all other powers that may be exercised in this State by legal  
38          entities of the same type as the association; and
- 39          (17)  Exercise any other powers necessary and proper for the governance and  
40          operation of the association.

41 **"§ 47E-3-103. Executive board members and officers.**

- 42       (a)   Except as provided in the declaration, in the bylaws, in subsection (b) of this  
43       section, or in other provisions of this Chapter, the executive board may act in all

1 instances on behalf of the association. In the performance of their duties, officers and  
2 members of the executive board shall discharge their duties in good faith. Officers shall  
3 act according to the standards for officers of a nonprofit corporation set forth in G.S.  
4 55A-8-42, and members shall act according to the standards for directors of a nonprofit  
5 corporation set forth in G.S. 55A-8-30.

6 (b) The executive board may not act unilaterally on behalf of the association to  
7 amend the declaration (G.S. 47E-2-117), to terminate the planned community (G.S. 47E-  
8 2-118), or to elect members of the executive board or determine the qualifications,  
9 powers and duties, or terms of office of executive board members (G.S. 47E-3-103(f)),  
10 but the executive board may unilaterally fill vacancies in its membership for the  
11 unexpired portion of any term. Notwithstanding any provision of the declaration or  
12 bylaws to the contrary, the lot owners, by a majority vote of all persons present and  
13 entitled to vote at any meeting of the lot owners at which a quorum is present, may  
14 remove any member of the executive board with or without cause, other than a member  
15 appointed by the declarant.

16 (c) Within 30 days after adoption of any proposed budget for the planned  
17 community, the executive board shall provide to all the lot owners a summary of the  
18 budget and a notice of the meeting to consider ratification of the budget, including a  
19 statement that the budget may be ratified without a quorum. The executive board shall set  
20 a date for a meeting of the lot owners to consider ratification of the budget, such meeting  
21 to be held not less than 10 nor more than 60 days after mailing of the summary and  
22 notice. There shall be no requirement that a quorum be present at the meeting. The  
23 budget is ratified unless at that meeting a majority of all the lot owners in the association  
24 or any larger vote specified in the declaration rejects the budget. In the event the  
25 proposed budget is rejected, the periodic budget last ratified by the lot owners shall be  
26 continued until such time as the lot owners ratify a subsequent budget proposed by the  
27 executive board.

28 (d) The declaration may provide for a period of declarant control of the  
29 association, during which period a declarant, or persons designated by the declarant, may  
30 appoint and remove the officers and members of the executive board.

31 (e) Not later than the termination of any period of declarant control, the lot owners  
32 shall elect an executive board of at least three members, at least a majority of whom shall  
33 be lot owners. The executive board shall elect the officers. The executive board  
34 members and officers shall take office upon election.

35 **"§ 47E-3-104. Transfer of special declarant rights.**

36 Except for transfer of declarant rights pursuant to foreclosure, no special declarant  
37 right (G.S. 47E-1-103(28)) may be transferred except by an instrument evidencing the  
38 transfer recorded in every county in which any portion of the planned community is  
39 located. The instrument is not effective unless executed by the transferee.

40 **"§ 47E-3-105. Termination of contracts and leases of declarant.**

41 If entered into before the executive board elected by the lot owners pursuant to G.S.  
42 47E-3-103(e) takes office, any contract or lease affecting or related to the planned  
43 community that is not bona fide or was unconscionable to the lot owners at the time

1 entered into under the circumstances then prevailing, may be terminated without penalty  
2 by the association at any time after the executive board elected by the lot owners pursuant  
3 to G.S. 47E-3-103(e) takes office upon not less than 90 days' notice to the other party.

4 **"§ 47E-3-106. Bylaws.**

5 (a) The bylaws of the association shall provide for:

6 (1) The number of members of the executive board and the titles of the  
7 officers of the association;

8 (2) Election by the executive board of officers of the association;

9 (3) The qualifications, powers and duties, terms of office, and manner of  
10 electing and removing executive board members and officers and filling  
11 vacancies;

12 (4) Which, if any, of its powers the executive board or officers may  
13 delegate to other persons or to a managing agent;

14 (5) Which of its officers may prepare, execute, certify, and record  
15 amendments to the declaration on behalf of the association; and

16 (6) The method of amending the bylaws.

17 (b) The bylaws may provide for any other matters the association deems necessary  
18 and appropriate.

19 **"§ 47E-3-107. Upkeep of planned community; responsibility and assessments for**  
20 **damages.**

21 (a) Except as otherwise provided in the declaration, G.S. 47E-3-113(h) or  
22 subsection (b) of this section, the association is responsible for causing the common  
23 elements to be maintained, repaired, and replaced when necessary and to assess the lot  
24 owners as necessary to recover the costs of such maintenance, repair, or replacement  
25 except that the costs of maintenance, repair, or replacement of a limited common element  
26 shall be assessed as provided in G.S. 47E-3-115(c)(1). Except as otherwise provided in  
27 the declaration, each lot owner is responsible for the maintenance and repair of his lot and  
28 any improvements thereon. Each lot owner shall afford to the association and when  
29 necessary to another lot owner access through the lot owner's lot reasonably necessary for  
30 any such maintenance, repair, or replacement activity.

31 (b) If a lot owner is legally responsible for damage inflicted on any common  
32 element, the association may direct such lot owner to repair such damage, or the  
33 association may itself cause the repairs to be made and recover damages from the  
34 responsible lot owner.

35 (c) If damage is inflicted on any lot by an agent of the association in the scope of  
36 the agent's activities as such agent, the association is liable to repair such damage or to  
37 reimburse the lot owner for the cost of repairing such damages. The association shall  
38 also be liable for any losses to the lot owner.

39 (d) When the claim under subsection (b) or (c) of this section is less than or equal  
40 to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved  
41 party may request that a hearing be held before an adjudicatory panel appointed by the  
42 executive board to determine if a lot owner is responsible for damages to any common  
43 element or the association is responsible for damages to any lot. If the executive board

1 fails to appoint an adjudicatory panel to hear such matters, hearings under this section  
2 shall be held before the executive board. Such panel shall accord to the party charged  
3 with causing damages notice of the charge, opportunity to be heard and to present  
4 evidence, and notice of the decision. This panel may assess liability for each damage  
5 incident against each lot owner charged or against the association not in excess of the  
6 jurisdictional amount established for small claims by G.S. 7A-210. When the claim  
7 under subsection (b) or (c) of this section exceeds the jurisdictional amount established  
8 for small claims by G.S. 7A-210, liability of any lot owner charged or the association  
9 shall be determined as otherwise provided by law. Liabilities of lot owners determined  
10 by adjudicatory hearing or as otherwise provided by law shall be assessments secured by  
11 lien under G.S. 47E-3-116. Liabilities of the association determined by adjudicatory  
12 hearing or as otherwise provided by law may be offset by the lot owner against sums  
13 owing to the association and if so offset, shall reduce the amount of any lien of the  
14 association against the lot at issue.

15 (e) The declarant alone is liable for maintenance, repair, and all other expenses in  
16 connection with any real estate which has not been incorporated into the planned  
17 community.

18 **"§ 47E-3-107A. Procedures for fines and suspension of planned community**  
19 **privileges or services.**

20 Unless a specific procedure for the imposition of fines or suspension of planned  
21 community privileges or services is provided for in the declaration, a hearing shall be  
22 held before an adjudicatory panel appointed by the executive board to determine if any  
23 lot owner should be fined or if planned community privileges or services should be  
24 suspended pursuant to the powers granted to the association in G.S. 47E-3-102(11)and  
25 (12). If the executive board fails to appoint an adjudicatory panel to hear such matters,  
26 hearings under this section shall be held before the executive board. The lot owner  
27 charged shall be given notice of the charge, opportunity to be heard and to present  
28 evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine  
29 not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and  
30 without further hearing, for each day after the decision that the violation occurs. Such  
31 fines shall be assessments secured by liens under G.S. 47E-3-116. If it is decided that a  
32 suspension of planned community privileges or services should be imposed, the  
33 suspension may be continued without further hearing until the violation or delinquency is  
34 cured.

35 **"§ 47E-3-108. Meetings.**

36 A meeting of the association shall be held at least once each year. Special meetings  
37 of the association may be called by the president, a majority of the executive board, or by  
38 lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of  
39 the votes in the association. Not less than 10 nor more than 60 days in advance of any  
40 meeting, the secretary or other officer specified in the bylaws shall cause notice to be  
41 hand-delivered or sent prepaid by United States mail to the mailing address of each lot or  
42 to any other mailing address designated in writing by the lot owner. The notice of any  
43 meeting shall state the time and place of the meeting and the items on the agenda,

1 including the general nature of any proposed amendment to the declaration or bylaws,  
2 any budget changes, and any proposal to remove a director or officer.

3 **"§ 47E-3-109. Quorums.**

4 (a) Unless the bylaws provide otherwise, a quorum is present throughout any  
5 meeting of the association if persons entitled to cast ten percent (10%) of the votes which  
6 may be cast for election of the executive board are present in person or by proxy at the  
7 beginning of the meeting.

8 (b) Unless the bylaws specify a larger percentage, a quorum is deemed present  
9 throughout any meeting of the executive board if persons entitled to cast fifty percent  
10 (50%) of the votes on that board are present at the beginning of the meeting.

11 (c) In the event business cannot be conducted at any meeting because a quorum is  
12 not present, that meeting may be adjourned to a later date by the affirmative vote of a  
13 majority of those present in person or by proxy. Notwithstanding any provision to the  
14 contrary in the declaration or the bylaws, the quorum requirement at the next meeting  
15 shall be one-half of the quorum requirement applicable to the meeting adjourned for lack  
16 of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%)  
17 from that required at the previous meeting, as previously reduced, until such time as a  
18 quorum is present and business can be conducted.

19 **"§ 47E-3-110. Voting; proxies.**

20 (a) If only one of the multiple owners of a lot is present at a meeting of the  
21 association, the owner who is present is entitled to cast all the votes allocated to that lot.  
22 If more than one of the multiple owners are present, the votes allocated to that lot may be  
23 cast only in accordance with the agreement of a majority in interest of the multiple  
24 owners, unless the declaration or bylaws expressly provide otherwise. Majority  
25 agreement is conclusively presumed if any one of the multiple owners casts the votes  
26 allocated to that lot without protest being made promptly to the person presiding over the  
27 meeting by any of the other owners of the lot.

28 (b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot  
29 owner. If a lot is owned by more than one person, each owner of the lot may vote or  
30 register protest to the casting of votes by the other owners of the lot through a duly  
31 executed proxy. A lot owner may not revoke a proxy given pursuant to this section  
32 except by actual notice of revocation to the person presiding over a meeting of the  
33 association. A proxy is void if it is not dated. A proxy terminates 11 months after its  
34 date, unless it specifies a shorter term.

35 (c) If the declaration requires that votes on specified matters affecting the planned  
36 community be cast by lessees rather than lot owners of leased lots, (i) the provisions of  
37 subsections (a) and (b) of this section apply to lessees as if they were lot owners; (ii) lot  
38 owners who have leased their lots to other persons may not cast votes on those specified  
39 matters; and (iii) lessees are entitled to notice of meetings, access to records, and other  
40 rights respecting those matters as if they were lot owners. Lot owners shall also be given  
41 notice, in the manner provided in G.S. 47E-3-108, of all meetings at which lessees may  
42 be entitled to vote.

43 (d) No votes allocated to a lot owned by the association may be cast.

1       (e) The declaration may provide that on specified issues only a defined subgroup  
2 of lot owners may vote provided:

3           (1) The issue being voted is of special interest solely to the members of the  
4 subgroup; and

5           (2) All except de minimis cost that will be incurred based on the vote taken  
6 will be assessed solely against those lot owners entitled to vote.

7       (f) For purposes of subdivision(e)(1) above, an issue to be voted on is not a  
8 special interest solely to a subgroup if it substantially affects the overall appearance of the  
9 planned community or substantially affects living conditions of lot owners not included  
10 in the voting subgroup.

11 **"§ 47E-3-111. Tort and contract liability.**

12       (a) Neither the association nor any lot owner except the declarant is liable for that  
13 declarant's torts in connection with any part of the planned community which that  
14 declarant has the responsibility to maintain.

15       (b) An action alleging a wrong done by the association shall be brought against the  
16 association and not against a lot owner.

17       (c) Any statute of limitation affecting the association's right of action under this  
18 section is tolled until the period of declarant control terminates. A lot owner is not  
19 precluded from bringing an action contemplated by this section because the person is a  
20 lot owner or a member or officer of the association.

21 **"§ 47E-3-112. Conveyance or encumbrance of common elements.**

22       (a) Portions of the common elements may be conveyed or subjected to a security  
23 interest by the association if persons entitled to cast at least eighty percent (80%) of the  
24 votes in the association, or any larger percentage the declaration specifies, agree in  
25 writing to that action; provided that all the owners of lots to which any limited common  
26 element is allocated shall agree in order to convey that limited common element or  
27 subject it to a security interest. The declaration may specify a smaller percentage only if  
28 all the lots are restricted exclusively to nonresidential uses. Distribution of proceeds of  
29 the sale of a limited common element shall be as provided by agreement between the lot  
30 owners to which it is allocated and the association. Proceeds of the sale or financing of a  
31 common element (other than a limited common element) shall be an asset of the  
32 association.

33       (b) The association, on behalf of the lot owners, may contract to convey common  
34 elements or subject them to a security interest, but the contract is not enforceable against  
35 the association until approved pursuant to subsection (a) of this section. Thereafter, the  
36 association has all powers necessary and appropriate to effect the conveyance or  
37 encumbrance, free and clear of any interest of any lot owner or the association in or to the  
38 common element conveyed or encumbered, including the power to execute deeds or other  
39 instruments.

40       (c) Any purported conveyance, encumbrance, or other voluntary transfer of  
41 common elements, unless made pursuant to this section is void.

42       (d) No conveyance or encumbrance of common elements pursuant to this section  
43 may deprive any lot of its rights of access and support.

1 "§ 47E-3-113. Insurance.

2 (a) Commencing not later than the time of the first conveyance of a lot to a person  
3 other than a declarant, the association shall maintain, to the extent reasonably available:

4 (1) Property insurance on the common elements insuring against all risks of  
5 direct physical loss commonly insured against including fire and  
6 extended coverage perils. The total amount of insurance after  
7 application of any deductibles shall be not less than eighty percent  
8 (80%) of the replacement cost of the insured property at the time the  
9 insurance is purchased and at each renewal date, exclusive of land,  
10 excavations, foundations, and other items normally excluded from  
11 property policies; and

12 (2) Liability insurance in reasonable amounts, covering all occurrences  
13 commonly insured against for death, bodily injury, and property damage  
14 arising out of or in connection with the use, ownership, or maintenance  
15 of the common elements.

16 (b) If the insurance described in subsection (a) of this section is not reasonably  
17 available, the association promptly shall cause notice of that fact to be hand-delivered or  
18 sent prepaid by United States mail to all lot owners. The declaration may require the  
19 association to carry any other insurance, and the association in any event may carry any  
20 other insurance it deems appropriate to protect the association or the lot owners.

21 (c) Insurance policies carried pursuant to subsection (a) of this section shall  
22 provide that:

23 (1) Each lot owner is an insured person under the policy to the extent of the  
24 lot owner's insurable interest;

25 (2) The insurer waives its right to subrogation under the policy against any  
26 lot owner or member of the lot owner's household;

27 (3) No act or omission by any lot owner, unless acting within the scope of  
28 the owner's authority on behalf of the association, will preclude  
29 recovery under the policy; and

30 (4) If, at the time of a loss under the policy, there is other insurance in the  
31 name of a lot owner covering the same risk covered by the policy, the  
32 association's policy provides primary insurance.

33 (d) Any loss covered by the property policy under subdivision (a)(1) of this section  
34 shall be adjusted with the association, but the insurance proceeds for that loss are payable  
35 to any insurance trustee designated for that purpose, or otherwise to the association, and  
36 not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the  
37 association shall hold any insurance proceeds in trust for lot owners and lienholders as  
38 their interests may appear. Subject to the provisions of subsection (h) of this section, the  
39 proceeds shall be disbursed first for the repair or restoration of the damaged property, and  
40 lot owners and lienholders are not entitled to receive payment of any portion of the  
41 proceeds unless there is a surplus of proceeds after the property has been completely  
42 repaired or restored, or the planned community is terminated.

1       (e) An insurance policy issued to the association does not prevent a lot owner from  
2 obtaining insurance for the lot owner's own benefit.

3       (f) An insurer that has issued an insurance policy under this section shall issue  
4 certificates or memoranda of insurance to the association and, upon written request, to  
5 any lot owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the  
6 policy may not cancel or refuse to renew it until 30 days after notice of the proposed  
7 cancellation or nonrenewal has been mailed to the association, each lot owner, and each  
8 mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of  
9 insurance have been issued at their respective last known addresses.

10       (g) Any portion of the planned community for which insurance is required under  
11 subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or  
12 replaced promptly by the association unless (i) the planned community is terminated, (ii)  
13 repair or replacement would be illegal under any State or local health or safety statute or  
14 ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote,  
15 including one hundred percent (100%) approval of owners assigned to the limited  
16 common elements not to be rebuilt. The cost of repair or replacement in excess of  
17 insurance proceeds and reserves is a common expense. If any portion of the planned  
18 community is not repaired or replaced, (i) the insurance proceeds attributable to the  
19 damaged common elements shall be used to restore the damaged area to a condition  
20 compatible with the remainder of the planned community, (ii) the insurance proceeds  
21 attributable to limited common elements which are not rebuilt shall be distributed to the  
22 owners of the lots to which those limited common elements were allocated, or to  
23 lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be  
24 distributed to all the lot owners or lienholders, as their interests may appear, in proportion  
25 to the common expense liabilities of all the lots. Notwithstanding the provisions of this  
26 subsection, G.S. 47E-2-118 (termination of the planned community) governs the  
27 distribution of insurance proceeds if the planned community is terminated.

28       (h) The provisions of this section may be varied or waived in the case of a planned  
29 community all of whose lots are restricted to nonresidential use.

30 **"§ 47E-3-114. Surplus funds.**

31       Unless otherwise provided in the declaration, any surplus funds of the association  
32 remaining after payment of or provision for common expenses, the funding of a  
33 reasonable operating expense surplus, and any prepayment of reserves shall be paid to the  
34 lot owners in proportion to their common expense liabilities or credited to them to reduce  
35 their future common expense assessments.

36 **"§ 47E-3-115. Assessments for common expenses.**

37       (a) Except as otherwise provided in the declaration, until the association makes a  
38 common expense assessment, the declarant shall pay all common expenses. After any  
39 assessment has been made by the association, assessments thereafter shall be made at  
40 least annually.

41       (b) Except for assessments under subsections (c), (d), and (e) of this section, all  
42 common expenses shall be assessed against all the lots in accordance with the allocations  
43 set forth in the declaration. Any past-due common expense assessment or installment



1 thereof bears interest at the rate established by the association not exceeding eighteen  
2 percent (18%) per year. For planned communities created prior to January 1, 1999,  
3 interest may be charged on any past-due common expense assessment or installment only  
4 if the declaration provides for interest charges, and where the declaration does not  
5 otherwise specify the interest rate, the rate may not exceed eighteen percent(18%) per  
6 year.

7 (c) To the extent required by the declaration:

8 (1) Any common expense associated with the maintenance, repair, or  
9 replacement of a limited common element shall be assessed against the  
10 lots to which that limited common element is assigned, equally, or in  
11 any other proportion that the declaration provides;

12 (2) Any common expense or portion thereof benefiting fewer than all of the  
13 lots shall be assessed exclusively against the lots benefitted; and

14 (3) The costs of insurance shall be assessed in proportion to risk and the  
15 costs of utilities shall be assessed in proportion to usage.

16 (d) Assessments to pay a judgment against the association may be made only  
17 against the lots in the planned community at the time the judgment was entered, in  
18 proportion to their common expense liabilities.

19 (e) If any common expense is caused by the negligence or misconduct of any lot  
20 owner or occupant, the association may assess that expense exclusively against that lot  
21 owner or occupant's lot.

22 (f) If common expense liabilities are reallocated, common expense assessments  
23 and any installment thereof not yet due shall be recalculated in accordance with the  
24 reallocated common expense liabilities.

25 **"§ 47E-3-116. Lien for assessments.**

26 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days  
27 or longer shall constitute a lien on that lot when a claim of lien is filed of record in the  
28 office of the clerk of superior court of the county in which the lot is located in the manner  
29 provided herein. The association may foreclose the claim of lien in like manner as a  
30 mortgage on real estate under power of sale under Article 2A of Chapter 45 of the  
31 General Statutes. Unless the declaration otherwise provides, fees, charges, late charges,  
32 finances, interest, and other charges imposed pursuant to G.S. 47E-3-102, 47E-3-107, 47E-3-  
33 107A, and 47E-3-115 are enforceable as assessments under this section.

34 (b) The lien under this section is prior to all liens and encumbrances on a lot  
35 except (i) liens and encumbrances (specifically including, but not limited to, a mortgage  
36 or deed of trust on the lot) recorded before the docketing of the claim of lien in the office  
37 of the clerk of superior court, and (ii) liens for real estate taxes and other governmental  
38 assessments and charges against the lot. This subsection does not affect the priority of  
39 mechanics' or materialmen's liens.

40 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the  
41 lien are instituted within three years after the docketing of the claim of lien in the office  
42 of the clerk of superior court.

1       (d) This section does not prohibit other actions to recover the sums for which  
2 subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu  
3 of foreclosure.

4       (e) A judgment, decree, or order in any action brought under this section shall  
5 include costs and reasonable attorneys' fees for the prevailing party.

6       (f) Where the holder of a first mortgage or first deed of trust of record, or other  
7 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or  
8 first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable  
9 for the assessments against such lot which became due prior to the acquisition of title to  
10 such lot by such purchaser. Such unpaid assessments shall be deemed to be common  
11 expenses collectible from all the lot owners including such purchaser, its heirs,  
12 successors, and assigns.

13       (g) A claim of lien shall set forth the name and address of the association, the  
14 name of the record owner of the lot at the time the claim of lien is filed, a description of  
15 the lot, and the amount of the lien claimed.

16 **"§ 47E-3-117: Reserved.**

17 **"§ 47E-3-118. Association records.**

18       (a) The association shall keep financial records sufficiently detailed to enable the  
19 association to comply with this Chapter. All financial and other records shall be made  
20 reasonably available for examination by any lot owner and the lot owner's authorized  
21 agents.

22       (b) The association, upon written request, shall furnish to a lot owner or the lot  
23 owner's authorized agents a statement setting forth the amount of unpaid assessments and  
24 other charges against a lot. The statement shall be furnished within 10 business days  
25 after receipt of the request and is binding on the association, the executive board, and  
26 every lot owner.

27 **"§ 47E-3-119. Association as trustee.**

28       With respect to a third person dealing with the association in the association's capacity  
29 as a trustee under G.S. 47E-2-118 following termination or G.S. 47E-3-113 for insurance  
30 proceeds, the existence of trust powers and their proper exercise by the association may  
31 be assumed without inquiry. A third person is not bound to inquire whether the  
32 association has power to act as trustee or is properly exercising trust powers, and a third  
33 person, without actual knowledge that the association is exceeding or improperly  
34 exercising its powers, is fully protected in dealing with the association as if it possessed  
35 and properly exercised the powers it purports to exercise. A third person is not bound to  
36 assure the proper application of trust assets paid or delivered to the association in its  
37 capacity as trustee.

38 **"§ 47E-3-120. Declaration limits on attorneys' fees.**

39       Except as provided in G.S. 47E-3-116, in an action to enforce provisions of the  
40 articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the  
41 court may award reasonable attorneys' fees to the prevailing party if recovery of  
42 attorneys' fees is allowed in the declaration.

1           Section 2. The Revisor of Statutes shall cause to be printed with this act all  
2 relevant portions of the official comments to the North Carolina Planned Community Act  
3 and all explanatory comments of the drafters of this act, as the Revisor deems  
4 appropriate.

5           Section 3. This act becomes effective January 1, 1999, and applies to planned  
6 communities created on or after that date. G.S. 47E-3-107(a),(b), and (c), G.S. 47E-3-  
7 115, and G.S. 47E-3-116 as enacted by Section 1 of this act apply to planned  
8 communities created prior to the effective date, except that the provisions of G.S. 47E-3-  
9 116(e) as enacted by Section 1 of this act, apply to actions arising on or after the effective  
10 date.