

THIS DOCUMENT PROVIDES GENERAL INFORMATION AND IS NOT LEGAL ADVICE
OR A LEGAL OPINION. ANY SPECIFIC QUESTIONS SHOULD BE DIRECTED TO A
LAWYER AT FORMAN ROSSABI BLACK OR TO ANOTHER ATTORNEY.

SUMMARY OF IMPORTANT PLANNED COMMUNITY ACT PROVISIONS

The following provisions apply to most residential planned communities in North Carolina, including those created before January 1, 1999:

- Unless Articles of Incorporation or Declaration state otherwise, the Association may:
 - a. Adopt and amend bylaws, rules, and regulations;
 - b. Adopt and amend budgets and collect assessments for common expenses;
 - c. Hire and discharge managing agents, employees, agents, and contractors;
 - d. Institute, defend, or intervene in litigation or administrative proceedings;
 - e. Make contracts and incur liabilities;
 - f. Regulate the use, maintenance, repair, replacement, and modification of common areas;
 - g. Impose reasonable charges for late payment of assessments, not to exceed the greater of \$20 per month or 10% of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except access to lots) during any period that assessments or other amounts remain unpaid for 30 days or longer;
 - h. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except access to lots) for reasonable periods for violations of the Declaration, Bylaws, or rules and regulations of the association;
 - i. Impose reasonable charges for the preparation and recordation of documents;
 - j. Provide for indemnification of and maintain liability insurance for officers, Board, employees, and agents;
 - k. Assign right to future income, including common expense assessments; and
 - l. Exercise any other powers necessary and proper for the governance and operation of the association.
- Board and officers' names and addresses must be published within 30 days of election.
- Unless Declaration provides otherwise, the Association is responsible for causing common areas to be maintained, repaired, and replaced when necessary. Association may assess lot owners as necessary for such maintenance, repair, or replacement.
- A lot owner is responsible for damage caused to common area. The Association is responsible for damage to a lot caused by its agents.
- Lot owners may be fined or planned community services or privileges suspended due to late payment of assessments or violations of the Declaration, Bylaws, or rules and

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regulations. Unless the Declaration provides otherwise, a hearing must be held before the Board or an adjudicatory panel of no Board members. The owner must be given notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision. Fines may not exceed \$100 per day beginning five days after decision. An adjudicatory panel decision may be appealed to the Board within 15 days.

- At least one Association meeting must be held per year. Special meetings may be called by the President, Board, or 10% of lot owners.
- Association meetings must be noticed with not less than 10 nor more than 60 days by hand-delivery, U.S. Mail, or electronic means (if designated by the owner).
- Notice of Association meetings must include agenda, including proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a Board member or officer.
- At regular intervals, Board must allow lot owners an opportunity to attend a portion of Board meeting to speak about issues or concerns, subject to reasonable time restraints.
- Meetings of the Association and Board must follow *Robert's Rules of Order Newly Revised (10th Edition)*.
- Unless Declaration provides otherwise, the Declarant must pay all common expenses until the Association makes a common expense assessment.
- Any assessment remaining unpaid for 30 days constitutes a lien on the lot when a claim of lien is filed with the Clerk of Superior Court.
- At least 15 days prior to filing lien, association must mail a statement of assessment amount due by first-class mail to all addresses of record.
- Assessment liens of fines or attorneys' fees only must be enforced by judicial foreclosure.
- Service, collection, consulting, or administration fees can only be collected if permitted in the Declaration.
- A judgment or order for assessments shall include costs and reasonable attorneys' fees for the prevailing party. Attorneys' fees on any collection action for delinquent assessment are limited to \$1,200 in uncontested cases.
- Lot owner not required to pay attorneys' fees and court costs for delinquent assessments unless provided specified 15 day notice letter by first-class mail.

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- Association must keep sufficient financial records. An annual income and expense statement and balance sheet must be available to lot owners within 75 days after the fiscal year. A more extensive compilation, review, or audit may be required by a vote of the Board or by a majority vote of lot owners present and voting at meeting.
- No financial payments, including goods or services, may be made to any officer or Board member or to a business, business associate, or relative of an officer or Board member except as expressly provided in the Bylaws or in payment for services or expenses of the Association approved in advance by the Board.
- In an action to enforce the Articles of Incorporation, Declaration, Bylaws, or rules and regulations, the court may award reasonable attorneys' fees to the prevailing party if allowed in the Declaration.
- Members generally may fly U.S. or N.C. flag or display political signs.

The following provisions apply to most residential planned communities in North Carolina created on or after January 1, 1999:

- Provisions of the Act may not be varied by agreement, unless allowed by statute.
- Zoning and building codes may not prohibit/discriminate against planned communities.
- Eminent domain issues are addressed.
- Other state statutes supplemental to the Act.
- Procedures for creating, altering, terminating, merging or consolidating communities.
- The Declaration prevails over the Bylaws in the event of a conflict.
- Unless Declaration provides otherwise, the Declaration may be amended by the affirmative vote or signed written agreement of 67% of Association votes.
- An adopted and recorded Declaration amendment cannot be challenged after one year.
- Associations must be incorporated as nonprofit corporations.
- Unless Articles of Incorporation or Declaration provide otherwise, the Association may:

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- a. Cause additional improvements to be made as part of the common area;
 - b. Acquire, hold, encumber, and convey any real or personal property, provided that common elements can only be conveyed or subjected to a security interest with 80% written approval (or higher if required by Declaration);
 - c. Grant easements, leases, licenses, and concessions over common areas; and
 - d. Impose and receive payments, fees, or charges for the use, rental, or operation of the common areas and for services provided to lot owners.
- Unless otherwise provided, Board may act on behalf of the Association.
 - Lot owners can remove any elected member of the board with or without cause at any meeting. Board may fill vacancies in membership for unexpired term.
 - Within 30 days after adoption of proposed budget, Board must provide a summary and notice of the meeting to consider ratification, including a statement that the budget may be ratified without a quorum. Meeting must be held not less than 10 nor more than 60 days after notice. Budget is ratified, even without a quorum, unless a majority of all lot owners reject the budget, in which case last budget continues.
 - Lot owners must elect a Board of at least 3 by termination of Declarant control.
 - Any contract or lease by Declarant that is not bona fide or was unconscionable to lot owners may be terminated by owner-elected Board with not less than 90 days' notice.
 - Liability of any party causing damage to common areas can be determined by an adjudicatory panel, and any award of monies is assessment secured by lien.
 - Unless otherwise provided in the Bylaws, a quorum of 10% must be present at the beginning of a membership meeting and of 50% at the beginning of a Board meeting.
 - In the event a quorum is not present at the beginning of a meeting, the meeting may adjourn to a later date by majority vote, at which time the quorum is halved. Quorum continues to reduce by 50% until a quorum is present.
 - If only one owner is present at a meeting, that owner may cast all the votes of the lot.
 - Some statutes of limitation are tolled until Declarant control terminates.
 - Unless Declaration provides otherwise, surplus funds after payment of common expenses, operating surplus, and reserve prepayment are paid or credited to lot owners.

11/1/2009