The North Carolina General Assembly is in the midst of its "long" session and has been considering a number of pieces of legislation of which community association managers and the members of the boards of directors of condominiums and planned communities need to be aware. Ward and Smith, P.A.'s Community Associations and Government Relations professionals have been following these pieces of legislation so that we can keep you informed regarding potential changes in the way community associations operate in North Carolina.

**What is the “Crossover” Deadline?**

Members of each chamber of the General Assembly worked feverishly last week to have pieces of legislation that they sponsored passed by their chamber and sent over to the other chamber before the "crossover" deadline. The crossover deadline is an important milestone in the General Assembly schedule, because, with a few exceptions, a bill that is not passed by one chamber before the crossover deadline is dead and cannot be considered during the remainder of the General Assembly's 2013-2014 session. As with any general rule, there are exceptions to the crossover deadline, and the three most common exceptions are explained below.

- **Fee and Appropriations Bills:** Any bill that includes a fee or an appropriation of state funds is not subject to the crossover deadline.
- **Amendment to a Bill That Made Crossover:** A bill that made the crossover deadline can be amended to add the language of a bill that did not make crossover as long as the new language is germane to the subject of the bill that made the crossover deadline. Alternatively, a bill that made the crossover deadline can be stripped completely and amended to include the language of the bill that did not make crossover as long as the germaneness requirement is satisfied.
- **Budget Special Provision:** The language of a bill can be included in the State Budget as a "special provision."

**The Status of Community Association Legislation**

Below is an update on the status of pieces of legislation that are important to community association managers and board members of condominiums and planned communities. We also have provided links to the bills that have either become law or made the crossover deadline if you would like to review the current legislative language.
SB 228 - HOAs/Limited Common Elements/Amendment of Declaration

This bill was signed into law by Governor McCrory on April 24, 2013, and will become effective on October 1, 2013. The new law amends the North Carolina Condominium Act and the North Carolina Planned Community Act to provide that:

- Unit owners in a condominium complex and lot owners in a planned community must provide access through any limited common elements assigned/allocated to the subject condominium unit or lot to the association and other unit or lot owners for maintenance, repair, and replacement activities;
- The association's Articles of Incorporation, Bylaws, and Declaration collectively form the legal basis upon which the association may act and such documents are enforceable pursuant to their terms; and
- Any properly adopted amendment to an association's Declaration is presumed to be valid and enforceable if adopted pursuant to the Acts or the procedures provided for in the Declaration.

SB 228

Bills That Made the Crossover Deadline

HB 278 - Voluntary Pre-litigation Mediation

This bill would do the following:

- Encourage, but not require, associations and owners involved in association-related disputes (other than disputes regarding the timely payment of assessments or related collection actions) to enter into non-binding pre-litigation mediation;
- Require each association to annually provide notice to all owners of the right to mediation;
- Toll the running of any statute of limitation or statute of repose applicable to the subject dispute during the mediation process; and
- Unless a settlement is reached in mediation, provide that no statement made during the mediation would be admissible into evidence if the dispute goes to trial.

HB 278

HB 330 - Transfer of Special Declarant Rights

This bill would clarify the rights and obligations of transferors and transferees of special declarant rights, whether such rights are transferred via a voluntary transfer or via foreclosure or bankruptcy.

This bill has been referred to the Senate Rules Committee, which usually means that the bill will not be considered by the Senate. As such, even though this bill made crossover, it is unlikely that it will become law. However, we will continue to monitor this bill and keep you informed on its status.

HB 330
HB 331 – Uniform Lien Procedure

This bill would do the following:

- Create a standard procedure for associations to collect assessments and file claims of lien when an owner fails to timely pay his/her assessment, with the foreclosure process operating similarly to the manner in which a deed of trust is foreclosed upon;
- Require the association's board of directors to specifically authorize a foreclosure action against a particular unit or lot; and
- With limited exceptions, validate non-judicial foreclosure proceedings and related sales that occurred prior to July 1, 2013.

HB 331

HB 793 – Fidelity Bonds

This bill would do the following:

- Require associations with annual assessments of more than $100,000 to obtain a fidelity bond in the amount of the association's annual operating budget (but subject to a coverage cap of $1,000,000) to insure against theft or acts of dishonesty by the association's board members and employees;
- Require condominium and planned community management companies to obtain a fidelity bond in the amount of the combined annual operating budgets of all of the management company's clients (but subject to a coverage cap of $2,000,000), with additional requirements regarding who can write such a policy and the terms of such a policy; and
- Require associations to obtain an audit of their financial records if the association meets any one of these audit triggers:
  - The association's Bylaws, Declaration, or other governing documents require an annual audit;
  - The association has annual revenues or expenses of more than $250,000; or
  - An audit is requested pursuant to a majority vote of the association's board or the unit/lot owners.

HB 793

Bills That Did Not Make the Crossover Deadline

The following bills did not make the crossover deadline:

- HB 175 – No HOA Home Foreclosures
- HB 553 – Increase Carteret County Occupancy Tax
- HB 871 – Regulate Community Association Managers
- HB 883 – Education Requirements for Community Association Board Members
- SB 18 – Amend Locksmith Licensure Act
- SB 661 – Exempt Utilities Owned or Leased by Community Associations from Public Utility Regulations

We hope that you find this legislative update useful. We will provide future updates at important points in the General Assembly's schedule. In addition, we will be preparing a more comprehensive article regarding the
positive impact of SB 228.

If you have any questions about any of these pieces of legislation or any other community association matter, please contact Adam M. Beaudoin at 910.794.4847. If you have any questions related to government relations, please contact Lee C. Hodge at 252.672.5430.

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