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Community Associations Legislative Update – End of 2013 Long Session – What Happens in Raleigh Does *Not* Stay in Raleigh

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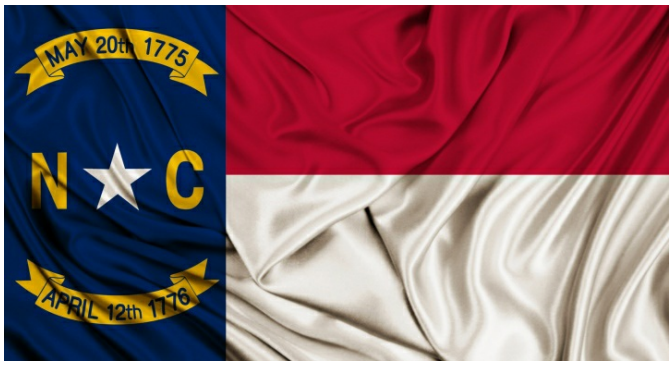

The North Carolina General Assembly has adjourned its 2013 "long" session and has enacted a number of pieces of legislation of which community association managers and the members of the boards of directors of both condominium and planned community associations (each, an "Association") need to be aware. Ward and Smith, P.A.'s Community Associations and Government Relations Practice Group professionals have been following these pieces of legislation so that we can keep you informed regarding potential changes in the way Associations operate in North Carolina.

Initial Matters

What Does "Adjournment" Mean?

"Adjournment" means that the General Assembly has completed its 2013 long session. However, the General Assembly can still be called into interim sessions to consider whether to override a gubernatorial veto or to consider specific policy matters. Absent any interim sessions, the General Assembly will convene its 2014 "short" session on May 14, 2014. The leaders of the General Assembly indicate that they do not expect any interim sessions.

Interim Study Committees

While the General Assembly may not be holding formal sessions during the interim period between the adjournment of the 2013 long session and the beginning of the 2014 short session, numerous study committees will be meeting to discuss proposed legislation. For example, much of the legislation described in this update grew out of a legislative study committee that was tasked with studying the state's community association laws. We will monitor any study committees that meet in the interim to discuss the state's community association laws will provide you with relevant updates.

The Status of Community Association Legislation

Below is an update on the status of legislation that is important to community association managers and board members of Associations. We also have provided links to the bills that have either become law or made the crossover deadline if you would like to review them.

- ***Bills That Have Been Signed Into Law***

    - **SB 228 – HOAs/Limited Common Elements/Amendment of Declarations**

      SB 228 was signed into law by Governor McCrory on April 24, 2013, and, except as noted below, became effective on that date. SB 228 amends the North Carolina Condominium Act ("Condominium Act") and the North Carolina Planned Community Act ("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;
        - For planned communities, the 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 a planned community's Declaration is presumed to be valid and enforceable if adopted pursuant to the Condominium Act or the Planned Community Act or the procedures provided for in the community's Declaration. This portion of SB 228 becomes effective on October 1, 2013.

    - **HB 278 – Voluntary Pre-Litigation Mediation**

      HB 278 was signed into law by Governor McCrory on June 19, 2013, and became effective on July 1, 2013. HB 278:

        - Encourages, but does not require, Associations and owners involved in Association-related disputes (other than disputes regarding the timely payment of assessments or related collections actions) to enter into non-binding pre-litigation mediation;
        - Requires each Association to annually provide notice to all owners of the right to mediation;
        - Tolls the running of any statute of limitation or statute of repose applicable to the subject dispute during the mediation process; and,
        - Provides that, unless a settlement is reached in mediation, no statement made during the mediation will be admissible into evidence if the dispute goes to trial.

It should be noted that the pre-litigation mediation is completely voluntary, but the annual notice to all owners regarding the right to mediation is mandatory.

    - **HB 331 – Uniform Lien Procedure**

      HB 331 was signed into law by Governor McCrory on June 26, 2013, and will become effective on October 1, 2013. HB 331 amends the Condominium Act and the Planned Community Act to:

        - Create a standard procedure for Associations to collect assessments and file claims of lien when an owner fails to timely pay his or her assessment, with the foreclosure process operating similarly to the foreclosure of a deed of trust;
        - Require an 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 October 1, 2013.

It is very important that you understand the new lien process, and we would be happy to discuss it with you.

- ***Bills That Did Not Pass But Are Eligible For Consideration During The 2014 Short Session***

  - **HB 330 – Transfer of Special Declarant Rights**

    HB 330 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 it will not be considered by the Senate. However, we will continue to monitor this bill and keep you informed of its status.

  - **HB 793 – Fidelity Bonds**

    HB 793 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 Association 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 bond and the terms of such a bond; 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 of directors or the unit or lot owners.
    - Require any Association with annual revenues or expenses in excess of $150,000 to obtain an annual financial review of the Association's financial statements and operations by a certified public accountant.

HB 793 passed the House and the Senate Commerce Committee and is currently pending before the Senate Insurance Committee. The fact that it has already passed a Senate committee indicates that it has a good chance of becoming law during the 2014 short session.

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article without obtaining the advice of an attorney.

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