

Community Associations Legislative Update – 2015 Long Session

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The North Carolina General Assembly continues to meet in the 2015 "long" session. The General Assembly is considering a number of pieces of legislation that could affect Community Association managers, members of condominium Boards of Directors, and planned communities. Ward and Smith, P.A.'s Community Associations and Government Relations professionals have been following these proposed pieces of legislation so that we can keep you informed regarding potential changes in the way Community Associations operate and are

regulated in North Carolina.

Minding The Crossover Deadline

At this point in the long session, the crossover deadline may have a significant impact on the success of a proposed piece of legislation. The crossover deadline is the last day for a bill to pass out of the chamber in which it was introduced and move forward for consideration in the opposite chamber (e.g. House to Senate). This is an important milestone in the General Assembly schedule, because, with 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 2015 session. However, there are exceptions to the crossover deadline, and the three most common exceptions are:

1. Fee and appropriation bills. Any bill that includes a fee or an appropriation of state funds is not subject to the crossover deadline.
2. Amendment to a bill that made crossover. A bill that is passed by one chamber before the crossover deadline may be amended to add the language of a bill that did not make the crossover deadline so long as the new language is germane to the subject of the bill that was passed before the crossover deadline. Alternatively, a bill that made the crossover deadline may be stripped completely and amended to include the language of a bill that was not passed by one chamber before the crossover deadline so long as the new language is germane to the subject of the bill that was timely moved from one chamber to the other.
3. Budget special provision. The language of a bill that was not passed in one chamber before the crossover deadline may nonetheless be included in the State Budget as a "special provision."

Although the crossover rules and exceptions are defined in the House and Senate Rules, lawmakers and lobbyists can, and do, use these exceptions to breathe life into bills that failed to make crossover deadline.

The Status Of Community Association Legislation

Below is the status of proposed bills that could have the greatest impact on Community Association managers, members of condominium Boards of Directors, and planned communities.

Bills That Made The Crossover Deadline And Are Still Under Consideration

House Bill 513 - Real Property/Technical Corrections

This bill supplements House Bill 330 adopted during the 2014 short session which clarified the rights and obligations surrounding the transfer of special declarant rights, whether such rights are transferred voluntarily or involuntarily through foreclosure or bankruptcy.

Senate Bill 119 - General Statutes Commission Technical Corrections 2015

This bill would expand the prohibition on transfer fees to:

- Any transfer fee covenant that is recorded after July 1, 2010;
- Any lien that is filed to enforce a transfer fee covenant that is recorded after July 1, 2010, or purports to secure payment of a transfer fee that is recorded after July 1, 2010; and,
- Any agreement imposing a private transfer fee obligation entered into after July 1, 2010.

Senate Bill 581 - Study/Subdivision Street Maintenance

This bill would require the North Carolina Department of Transportation ("NCDOT") to study the process to be used before the NCDOT accepts, for maintenance purposes, subdivision streets dedicated as public on the State highway system. The bill specifically requires study of "what the financial impact is on the State and homeowners when subdivision streets are or are not accepted on the State highway system for maintenance."

Bills That Did Not Make the Crossover Deadline But Fall Within An Exception And May Be "Reactivated" By The General Assembly

House Bill 514 - Community Association Managers Licensing Act

This bill is a companion to Senate Bill 563 and would:

- Add at least two (2) licensed Community Association managers to the North Carolina Real Estate Commission;
- Require after July 1, 2016, that any person, partnership, corporation, LLC, association, or other business that acts as a Community Association manager obtain a Community Association manager's license from the North Carolina Real Estate Commission. This licensure would require that the applicant:
 - Be at least 18 years of age;
 - Have completed at least 45 hours of classroom instruction from a school approved by the Commission;
 - Pass a licensing examination;
 - Pay an application fee not to exceed \$200.00;
 - Provide evidence of a fidelity bond in at least the amount of the combined budgets of all clients of the manager, but not to exceed \$2,000,000.00 gross; and,
 - Pass a criminal background check.
- Require all Community Associations in North Carolina to register with the State and pay an annual fee in an amount not to exceed \$100.00 (which can be increased \$10.00 per year), regardless of whether or not the Association is professionally managed; and,
- Prohibit any Association that fails to register from pursuing any legal remedy available to it, including,

but not limited to, the ability to file liens against a delinquent lot or unit owner.

House Bill 731 - Fidelity Bonds/Community Association Commission

This bill would:

- Require Associations with annual expenses of \$100,000.00 or more to obtain a fidelity bond in the amount of the annual operating budget of the Association, (with coverage capped at \$1,000,000.00);
- Require Community Association management companies to obtain fidelity bonds in an amount up to \$2,000,000.00;
- Require an annual financial audit for all Associations with annual revenues or expenditures of \$250,000.00 or more;
- Require that all Associations with annual revenues or expenditures of \$150,000.00 or more have a CPA conduct an annual review of Association financial statements; and,
- Create a North Carolina Community Association Commission to regulate managers and Associations, and:
 - Require after July 1, 2016, that any person or business entity that acts as a Community Association manager obtain a license from the Commission. This licensure would require that the applicant:
 - Be at least 18 years of age;
 - Demonstrate to the Commission the necessary skills needed to function as a Community Association manager;
 - Pass all testing standards established by the Commission;
 - Pay an application fee not to exceed \$300.00, and any additional examination fees;
 - Provide evidence of a fidelity bond in at least the amount of combined budgets for all clients of manager, but not to exceed \$2,000,000.00 gross; and,
 - Satisfy any other requirements established by the Commission.
 - Impose a mandatory annual Association registration fee of up to \$100.00 per Association; and,
 - Allow the Commission to discipline community managers and Associations in the event of rule violation.

House Bill 882 - Community Association Property Management Act

This bill would:

- Make it unlawful, after October 1, 2015, for any person to act as a property manager without first obtaining a real estate broker's license from the North Carolina Real Estate Commission;
- Require every Community Association property manager to carry a fidelity bond in the amount of at least \$20,000.00 and to provide proof of insurance to the North Carolina Real Estate Commission;
- Require Community Associations to register with the North Carolina Real Estate Commission annually, pay an annual \$100.00 fee, and provide the Commission with certain information about the Community Association;
- Require Community Association Board Members to complete a minimum of four (4) hours of education within 60 days after election to the Board at a cost of \$75.00 per individual;
- Require that Community Association Board Members who do not take the required educational course be forced to resign from the Community Association Board;
- Make several changes to the Act dealing with common expenses, amendment of declaration, master associations, board members, and association records; and,
- Require mandatory return of any surplus assessments to the lot owners after funding reserves.

Bills That Did Not Make The Crossover Deadline

The following bills did not make the crossover deadline, are not subject to any crossover deadline exception, and therefore are now dead:

- House Bill 336 – Creation of Joint Legislative Study Committee on Homeowners Associations
- House Bill 931 – No HOA Home Foreclosures
- Senate Bill 467 – Removing Unpaid Volunteer HOA Board Members from the Definition of Employee under the Workers Compensation Act

Future Updates And Questions

Ward and Smith will provide further updates at important points in the General Assembly schedule. If you have any questions about any of these pieces of legislation or any other Community Associations matter, please contact Adam M. Beaudoin at amb@wardandsmith.com or 910.794.4847.

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