

FAQ's About NC Homeowner & Condominium Associations

by Jim Slaughter

Based on "State Laws Affecting Common Interest Communities Frequently Asked Questions ("FAQs") Project" for the College of Community Association Lawyers. Jim Slaughter is a member of the College of Community Association Lawyers and currently serves on the national CCAL Board of Governors. Answers current as of spring 2014.

GENERAL

1. What state statutes apply to Common Interest Communities in your state?

North Carolina has several layers of community association laws. The NC Condominium Act (Chapter 47C) applies to condominiums created on or after October 1, 1986. The NC Planned Community Act (Chapter 47F) applies to most planned communities (HOA's) created on or after January 1, 1999. Approximately one-third of both chapters are retroactive and apply to associations created before the operative dates of the statutes. Finally, the NC Nonprofit Act (Chapter 55A) may apply to any incorporated community association (as most are) and the issue is not specifically addressed in the Condominium or Planned Community Acts.

2. Are Common Interest Communities required to incorporate? Can they be incorporated? Advantages/Disadvantages?

Planned communities created on or after January 1, 1999, and governed by the NC Planned Community Act must incorporate no later than the date the first lot is conveyed. (NCGS § 47F-3-101) There is no comparable condominium statute. However, any condominium or older planned community may incorporate as a nonprofit and most do.

3. Is there a state agency which has authority to regulate and oversee the affairs of Common Interest Communities? What is the scope of its power and authority?

There is no agency that specifically regulates or oversees the affairs of community associations. Various state agencies, including the Attorney General's office, occasionally become involved in certain community association issues.

4. On the state level, what are the annual reporting requirements of a Common Interest Community, if any, and to whom?

For incorporated community associations, there are certain annual reports required by the Secretary of State's office as with other nonprofit corporations.

MEMBERSHIP MEETINGS

5. Is an Annual Meeting of Members required?

Both the NC Planned Community Act (NCGS § 47F-3-108(a)) and the NC Condominium Act (NCGS § 47C-3-108(a)) require that a meeting of the association be held at least once each year. These two statutes apply retroactively to older associations.

6. How are Special Meetings of the Members called?

The NC Planned Community Act (NCGS § 47F-3-108(a)) allows special meetings to be called by the president, a majority of the executive board, or by lot owners having ten percent of the votes in the association (or any lower percentage specified in the bylaws). The NC Condominium Act (NCGS § 47C-3-108(a)) has almost identical language, but requires unit owners having 20 % of the votes in the association (or any lower percentage specified in the bylaws). These two statutes apply retroactively to older associations.

7. What are the Notice Requirements for Membership Meetings?

Planned communities must provide not less than 10 nor more than 60 days notice sent by hand-delivery or prepaid U.S. mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail to an electronic mailing address designated in writing by the lot owner. (NCGS § 47F-3-108(a)) Condominium associations must provide not less than 10 nor more than 50 days notice sent by hand-delivery or prepaid U.S. mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail to an electronic mailing address designated in writing by the unit owner. (NCGS § 47C-3-108(a)) These two statutes apply retroactively to older associations.

8. What are Quorum Requirements for Membership Meetings?

For planned communities created on or after January 1, 1999, and governed by the NC Planned Community Act, a quorum (unless the bylaws provide otherwise) is present throughout any meeting if persons entitled to cast 10% of the votes of the association are present in person or by proxy at the beginning of the meeting. (NCGS § 47F-3-109(a)) For condominium associations created on or after October 1, 1986, a quorum (unless the bylaws provide otherwise) is present throughout any meeting if persons entitled to cast 20% of the votes of the association are present in person or by proxy at the beginning of the meeting. (NCGS § 47C-3-109(a))

Under the NC Planned Community Act, if business cannot be conducted because a quorum is not present, the meeting may be adjourned to a later date by a majority vote of those present in person or by proxy. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum requirement at the next meeting is one half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision continues to reduce the quorum by fifty percent (50%) from the previous meeting until such time as a quorum is present and business can be conducted. (NCGS § 47F-3-109(c))

For older incorporated associations not governed by the Acts, a quorum (unless the articles of incorporation or bylaws provide otherwise) is ten percent (10%) of the votes entitled to be cast. (NCGS § 55A-7-22(a)) Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

9. Can Members use Proxies? Absentee Ballots? Mail Ballots?

North Carolina has many statutes governing proxies:

§ 47F-3-110 & 47C-3-110 (for later associations only)

Voting; proxies.

1. If only one of the multiple owners of a lot is present at a meeting of the association, the owner who is present is entitled to cast all the votes allocated to that lot. If more than one of the multiple owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration or bylaws expressly provide otherwise. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot. (b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy. A lot owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

§ 55A-7-24. Proxies. (Nonprofit Act governing older associations)

- (a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for him by signing an appointment form, either personally or by his attorney in fact. A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies (i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii) by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.
- (b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.
- (c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

1. Attending any meeting and voting in person; or signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

The NC Nonprofit Act provides that unless prohibited or limited by the articles of incorporation or bylaws, any action that may be taken at a meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter that (1) sets forth each proposed action; and (2) provides an opportunity to vote for or against each proposed action. The number of votes cast by ballot must equal or exceed the quorum required to be present at a meeting authorizing the action, and all solicitations for votes by written ballot must indicate the time by which the ballot must be received by the corporation to be counted. (NCGS § 55A-7-08)

10. Can Members Raise Concerns or Issues at a Membership Meeting?

The NC Planned Community and Condominium Acts do not prohibit members from raising concerns or issues at an annual meeting for discussion, but there are statutory limitations on the business that can be transacted. Both the NC Planned Community Act (NCGS § 47F-3-108(a)) and the NC Condominium Act (NCGS § 47C-3-108(a)) require that the notice of any meeting state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer. In addition, only business mentioned in the call can be transacted at a special meeting.

11. Can Non-Members attend Membership Meetings? (Attorneys of Members? Guests of Members? Local or National Media representatives?)

Nothing in the NC Planned Community or NC Condominium Act gives non-members the right to attend membership meetings of a community association, but such issue could be addressed in the governing documents of the association or by a vote of the members. Generally, however, a member can send anyone (whether another member or non-member) as a proxy to an association membership meeting.

BOARD MEETINGS

12. Are Boards of Directors required to hold Regular Board Meetings?

Both the NC Planned Community Act (NCGS § 47F-3-108(b)) and the NC Condominium Act (NCGS § 47C-3-108(b)) provide that the executive board shall meet as provided in the bylaws. These statutes apply retroactively to older associations.

13. How are Special Meetings of the Board called?

Neither the NC Planned Community Act (NCGS § 47F-3-108(b)) nor the NC Condominium Act (NCGS § 47C-3-108(b)) addresses the issue of calling special meetings of the board, and this issue is generally covered in the governing documents. However, for incorporated associations, the NC Nonprofit Act provides that unless the articles of incorporation or bylaws provide otherwise, the presiding officer of the board, the president, or 20% of the directors may call and give notice of a special meeting of the board. (NCGS § 55A-8-22(c)).

14. What are the Notice requirements for Board meetings? Are Members required to be notified as well?

Neither the NC Planned Community Act (NCGS § 47F-3-108(b)) nor the NC Condominium Act (NCGS § 47C-3-108(b)) addresses the issue of notice for board meetings, but simply note that meetings of the executive board shall be held as provided in the bylaws.

However, for incorporated associations, the NC Nonprofit Act provides that regular meetings of the board may be held without notice of the date, time, place, or purpose of the meeting, unless the articles of incorporation or bylaws provide otherwise. The NC Nonprofit Act provides that special meetings of the board of directors shall be held upon such notice as is provided in the articles of incorporation or bylaws, or in the absence of any such provision, upon notice sent by any usual means of communication not less than five days before the meeting. The notice need not describe the purpose of the special meeting unless required by the Nonprofit Act, the articles of incorporation, or the bylaws. (NCGS § 55A-8-22).

15. What constitutes a quorum for Board Meetings?

For planned communities created on or after January 1, 1999, and subject to the NC Planned Community Act, a quorum (unless the bylaws specify a larger percentage) is present throughout any meeting of the board if persons entitled to cast 50% of the votes are present at the beginning of the meeting. (NCGS § 47F-3-109(b)) For condominium associations created on or after October 1, 1986, a quorum (unless the bylaws specify a larger percentage) is present throughout any meeting of the board if persons entitled to cast 50% of the votes on that board are present at the beginning of the meeting. (NCGS § 47C-3-109(b))

For older associations, the NC Nonprofit Act provides that except as otherwise provided in the Nonprofit Act, the articles of incorporation, or the bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins, but in no event fewer than one third of the number of directors in office. NCGS § 55A-8-24(a).

16. Can Board Members use Proxies?

No. While there is no statute on point, it is generally understood that board members cannot transfer by proxy their fiduciary board responsibilities.

17. Which meetings of the Board of Directors are open to all homeowners?

There is no statutory requirement that specific meetings of the Board are open to all homeowners. However, both the NC Planned Community Act (NCGS § 47F-3-108(b)) and the NC Condominium Act (NCGS § 47C-3-108(b)) provide as follows:

At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

These two statutes apply retroactively to older associations.

18. Does a Member have the right to address the Board of Directors during the meeting?

Both the NC Planned Community Act (NCGS § 47F-3-108(b)) and the NC Condominium Act (NCGS § 47C-3-108(b)) provide as follows:

At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

These two statutes apply retroactively to older associations.

19. Can the Board of Directors meet in Closed or Executive Session? If so, for what purposes?

There are no statutory prohibitions on the executive board meeting in closed session for any reason.

20. Are Minutes of Board Meetings required? When can Members see the minutes of such meetings?

Both the NC Planned Community Act (NCGS § 47F-3-118(a)) and the NC Condominium Act (NCGS § 47C-3-118(a)) provide that minutes of the executive board shall be made reasonably available for examinations by owners, which would certainly suggest that such minutes must be kept. These two statutes apply retroactively to older associations.

21. Does a Member have a right to audio- or video-records meetings of the Board? Under what circumstances or conditions?

There is no statutory right for a member to audio or video-record meetings of the executive board.

22. Can Non-Members attend Board Meetings?

Both the NC Planned Community Act (NCGS § 47F-3-108(b)) and the NC Condominium Act (NCGS § 47C-3-108(b)) provide as follows:

At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

These two statutes apply retroactively to older associations.

ADMINISTRATION

23. Does a Member have a right to review books and records of the Association?

- 1. If so, what books and records can be reviewed?**
- 2. Can the Member obtain copies of the books and records requested?**
- 3. Does a Member have to pay for copies of the books and records?**
- 4. Are there books and records which the Association can withhold or otherwise prevent a Member from reviewing?**

Both the NC Planned Community Act (NCGS § 47F-3-118(a)) and the NC Condominium Act (NCGS § 47C-3-118(a)) provide that all financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A (the Nonprofit Act). The Nonprofit Act provides greater detail on the rights of members as to records, distinguishing between those records available upon request (i.e., governing documents, actions adopted by the members, minutes of membership meetings, written communications to the members, names and addresses of board members) and other records which may be available depending on the circumstances. (NCGS § 55A-16-01 through § 55A-16-01) A corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the member; however, the charge may not exceed the estimated cost of production or reproduction of the records. NCGS § 55A-16-03.

24. What are the Reserve requirements in the State? Are Reserve Studies mandated? What reporting requirements does the Association have with respect to the status of the Reserves, the Reserve Accounts or the funding of the Reserves?

There is no statutory reserve or reserve study requirement in the NC Planned Community Act. The NC Condominium Act provides that the public offering statement must include a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement. NCGS § 47C-4-103(a)(5).

25. What are the resale disclosure requirements?

The Residential Property Disclosure Act (NCGS § 47E) requires owners of residential real estate to furnish potential purchasers a Residential Property and Owners' Association Disclosure

Statement. The Disclosure Statement is not required on the first sale of a dwelling that has never been inhabited. Several questions on the Disclosure Statement concern associations the property is subject to and any outstanding financial obligations, among other things.

26. Does the Membership by Vote or the Board of Directors establish the Assessment?

Varies. (See Question #27)

27. Is a budget required?

For planned communities created on or after January 1, 1999, and governed by the NC Planned Community Act:

Within 30 days after adoption of any proposed budget, the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board. NCGS § 47F-3-103(c)

For condominiums (regardless of when created):

Within 30 days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board. NCGS § 47C-3-103(c)

28. Is an annual audit required?

There is no statutory annual audit requirement. However, both the NC Planned Community Act (NCGS § 47F-3-118(a)) and the NC Condominium Act (NCGS § 47C-3-118(a)) provide that notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose. These two statutes apply retroactively to older associations.

29. Does the State regulate the collection of assessments?

1. **What happens if a Member is delinquent in the payment of assessments?**
2. **How can an association increase annual assessments?**

3. **Under what circumstances can my association levy special assessments?**
4. **Are there provisions related to additional assessments or adjustments in the budget or assessment level in the event of a deficit?**

Both the NC Planned Community Act (NCGS § 47F-3-116) and the NC Condominium Act (NCGS § 47C-3-116) detail the process for collection of delinquent assessments. Generally, any assessment levied against a lot/unit remaining unpaid for a period of 30 days or longer constitutes a lien on the lot/unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided by statute. Certain statutory steps are required both before and following the filing of the lien. The statutes governing collection of assessments apply retroactively to older associations.

There are no statutory requirements for the levying of annual or special assessments. However, see Question #27.

30. What authority does the association have to access a Unit or Lot? Under what circumstances?

For all planned communities, each lot owner shall afford to the association and when necessary to another lot owner access through the lot owner's lot or the limited common element allocated to the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity. NCGS § 47F-3-107(a). This statute applies retroactively to older planned communities. For condominium associations created on or after October, 1, 1986, each unit owner must afford to the association access through his unit as reasonably necessary for the maintenance, repair, or replacement of common elements. NCGS § 47C-3-107(a).

31. Does the Association have the authority to adopt rules and regulations? By law or by statute?

Both the NC Planned Community Act (NCGS § 47F-3-102(1)) and the Condominium Act (NCGS § 47C-3-102(1)) provide that unless the articles of incorporation or the declaration expressly provides to the contrary, the association may adopt and amend rules and regulations. These two statutes apply retroactively to older associations.

32. Does the Association have the authority to assess charges or fines for violations by Members? Does the Association have the right to suspend the right of use of the common elements or common areas in the event of a violation? To suspend the right of a Member to vote or otherwise participate in the Association in the event of a violation?

Both the NC Planned Community Act (NCGS § 47F-3-102(12)) and the NC Condominium Act (NCGS § 47C-3-102(12)) provide that the association, after notice and opportunity to be heard, may impose reasonable fines or suspend privileges or services provided by the association (except rights of access) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association. The procedures for fines and suspension of services is further defined in NCGS § 47F-3-107.1 for planned communities and NCGS § 47C-3-107.1 for condominiums. These two statutes apply retroactively to older associations.

Generally, the right of a member to vote is not considered to be suspendable unless clearly defined in the declaration (which typically gives an owner the right to vote).

33. Is there a requirement to have an internal administrative Complaint or Dispute Process? Is it mandatory and/or a prerequisite to other legal action?

There is no statutory requirement to have an internal administrative complaint or dispute process. However, both the NC Planned Community Act (NCGS § 47F-3-107.1) and the NC Condominium Act (NCGS § 47C-3-107.1) require that certain steps be taken prior to the imposition of fines or suspension of planned community privileges or services.

NCGS § 7A-38.3F mandates that associations notify members each year of the right to request voluntary mediation of disputes; however, either party may decline mediation. (NOTE: Disputes related solely to a member's failure to timely pay an association assessment or any fines or fees associated with the levying or collection of an association assessment are not covered by the mediation statute.)

34. Does any applicable statute provide for the removal of a Board Member, several Board members, or the entire Board? Under what conditions? Who decides upon their successors and when?

Both the Planned Community Act (NCGS § 47F-3-103) and the Condominium Act (NCGS § 47C-3-103) provide that notwithstanding any provision of the declaration or bylaws to the contrary, the owners, by a majority vote (67% vote for condominium associations) of all persons present and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant. Any proposal to remove a director must be include in the notice of the meeting. (NCGS § 47F-3-108(a); NCGS § 47C-3-108(a)) The executive board is authorized to fill vacancies in its membership for the unexpired portion of any term. (NCGS § 47F-3-103(b); NCGS § 47C-3-103(b)) Generally, it is understood that if the entire board of directors is removed at a meeting, the members would need to fill the vacancies for the unexpired portion of the term. These two statutes apply retroactively to older associations.

35. Can an association be placed into receivership by a Court under state law?

Neither the NC Planned Community Act nor the Condominium Act has provisions for receivership. The NC Nonprofit Act has provisions for receivership of nonprofit corporations pertaining to judicial proceedings brought to dissolve a corporation. (NCGS § 55A-14-32)

36. Does state statute provide for condemnation of common property?

For planned communities created on or after January 1, 1999, and governed by the NC Planned Community Act, if part of the common elements is acquired through eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless otherwise provided in the declaration, any portion of the award attributable to the acquisition of a limited common element must be apportioned among the owners of the lots to which that limited common element was allocated at the time of acquisition based on their allocated interest in the common elements before the taking. (NCGS § 47F-1-107(d)) Almost identical statutory language exists for condominium associations, which also applies retroactively to older associations. (NCGS § 47C-1-107(d))

UNIT/LOT OWNER ISSUES

37. What action(s) can an association take in the event of non-payment of association assessments? Is foreclosure an option? Under what circumstances? (Please address judicial and non-judicial foreclosure.)

For collection of delinquent assessments, both the NC Planned Community Act (NCGS § 47F-3-116) and the NC Condominium Act (NCGS § 47C-3-116) permit an association to foreclose a claim of lien in like matter as a mortgage or deed of trust on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes. Numerous statutory steps are required both before and following the filing of the claim of lien. If the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines, the association may not use this process, but must enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. The statutes governing collection of assessments apply retroactively to older associations.

38. Are there state laws that regulate whether a Member can be assessed a charge or otherwise fined by my association for violations? What violations trigger this authority? What procedures must be followed?

- 1. What actions can the association take to collect these charges or fines;**
- 2. Can my association foreclosure on my property for non-payment of these charges or fines?**

Both the NC Planned Community Act (NCGS § 47F-3-107.1) and the NC Condominium Act (NCGS § 47C-3-107.1) provide that unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing must be held before the executive board or an adjudicatory panel appointed by the executive board. Any adjudicatory panel appointed by the executive board must be composed of members of the association who are not officers of the association or members of the executive board. The lot owner charged must be given notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed \$100 may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision, which may affirm, vacate, or modify the prior decision of the adjudicatory body. The statutes governing violation hearings apply retroactively to older associations.

As discussed in Question #37, if the debt securing a lien consists solely of fines, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines, the association can only enforce such a lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes.

39. What, if any, other internal administrative enforcement options can the association take in the event of a violation of the state statute, association's governing documents, or the rules and regulations of the association?

Both the NC Planned Community Act (NCGS § 47F-3-107.1) and the NC Condominium Act (NCGS § 47C-3-107.1) permit an association to suspend planned community privileges or services following a hearing as outlined in Question #38. The statutes governing violation hearings apply retroactively to older associations.

Also, for planned communities created on or after January 1, 1999, and governed by the NC Planned Community Act, there is a statutory provision for a hearing when damage by a lot owner to the common elements or by the association to a lot is less than the jurisdictional amount for a small claims hearing. In such instances, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the executive board (if the executive board fails to appoint an adjudicatory panel, hearings are held before the executive board). Such a panel must accord to the party charged with causing damages notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability against each lot owner charged or against the association not in excess of the jurisdictional amount established for small claims. (NCGS § 47F-3-107(d))

For condominium associations created on or after October 1, 1986, the bylaws of the association may provide for a hearing before an adjudicatory panel when the claim involves damage by a unit owner to the common elements or by the association to a unit of \$500 or less. Such a panel must accord to the party charged with causing damages notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision. This panel may assess a liability for each damage incident not in excess of \$500 against each unit owner charged or against the association. (NCGS § 47C-3-107(d))

40. Does any applicable statute regulate the flying of the American Flag?

Both the NC Planned Community Act (NCGS § 47F-3-121) and the NC Condominium Act (NCGS § 47C-3-121) forbid the regulation or prohibition of the display of the flag of the United State or North Carolina, except in limited instances based on the language of the restriction and whether the restriction was registered prior to or after October 1, 2005. The statutes governing the display of flags apply retroactively to older associations.

41. Does any applicable statute regulate solar panels? Clotheslines?

NCGS § 22B-20 (“Deed Restrictions and Other Agreements Prohibiting Solar Collectors”) makes void and unenforceable, except in listed instances, any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector for a residential property. The statute applies to “residential property,” but specifically excludes any condominium located in a multi-story building containing units having horizontal boundaries.

No North Carolina state statute regulates clotheslines.

42. What are the rules regarding placement of satellite dishes or antennas on my property? (Link to the OTARD Fact Sheet.)

No North Carolina statutes govern the placement of satellite dishes or antennas on property beyond those contained in federal regulations.

43. What dispute resolution options do I have if I have a problem with the board?

NCGS § 7A-38.3F mandates that associations notify members each year of the right to request voluntary mediation of disputes; however, either party may decline mediation. (NOTE: Disputes related solely to a member's failure to timely pay an association assessment or any fines or fees associated with the levying or collection of an association assessment are not covered by the mediation statute.)

44. What is the state law regarding recalling board members?

For planned communities created on or after January 1, 1999, and governed by the NC Planned Community Act: "Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant." NCGS § 47F-3-103.

For condominium associations created after October 1, 1986: "Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by at least sixty seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant." NCGS § 47C-3-103

For incorporated associations, the NC Nonprofit Act has detailed provisions for removing directors, which would be applicable to older associations. In addition, some provisions, such as removal of directors by judicial proceeding under NCGS § 55A-8-10, would seem to be available to any incorporated association:

§ 55A-8-08. Removal of directors elected by members or directors.

- (a) The members may remove one or more directors elected by them with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
- (b) If a director is elected by a class, chapter or other organizational unit, or by region or other geographic grouping, the director may be removed only by that class, chapter, unit, or grouping.
- (c) Except as provided in subsection (i) of this section, a director may be removed under subsection (a) or (b) of this section, only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.
- (d) If cumulative voting is authorized, a director shall not be removed:
 - (1) If the number of votes; or
 - (2) If the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping; sufficient to elect the director

under cumulative voting, if an election were then being held, is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) through (d) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) through (e) of this section.

(h) A majority of the directors then in office or such greater number as is set forth in the articles of incorporation or bylaws may, subject to any limitation in the articles of incorporation or bylaws, remove any director elected by the board of directors; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed by the members, but not the board.

(i) Notwithstanding any other provision of this section, if, at the beginning of a director's term on the board of directors, the articles of incorporation or bylaws provide that the director may be removed by the board for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(j) Notwithstanding any other provision of this section, the articles of incorporation or bylaws may provide that directors elected after the effective date of such provision shall be removed automatically for missing a specified number of board meetings.

(k) The articles of incorporation may:

(1) Limit the application of this section in the case of a charitable or religious corporation; and

(2) Set forth the vote and procedures by which the board of directors or any person may remove with or without cause a director elected by the members or the board.

§ 55A-8-09. Removal of designated or appointed directors.

(a) A designated director may be removed by an amendment to the articles of incorporation or bylaws deleting or changing the provision containing the designation.

(b) Except as otherwise provided in the articles of incorporation or bylaws:

(1) An appointed director may be removed with or without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and to the corporation; and

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

(c) Notwithstanding any other provision of this section, the articles of incorporation or bylaws may provide that directors appointed after the effective date of such provision shall be removed automatically for missing a specified number of board meetings.

§ 55A-8-10. Removal of directors by judicial proceeding.

(a) The superior court of the county where a corporation's principal office (or, if there is none in this State, its registered office) is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or by its members holding at least ten percent (10%) of the votes entitled to be cast of any class of members, if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in G.S. 55A-8-30 through G.S. 55A-8-33, and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board of directors for a period prescribed by the court.

(c) If members commence a proceeding under subsection (a) of this section, the corporation shall be made a party defendant.

AMENDMENT OF DOCUMENTS

45. Does state statute provide for the amendment of the association's documents?

- 1. What percentage of the owners must approve?**
- 2. Is percentage based on those voting or totality of the number of owners?**
- 3. Is the vote taken at a meeting or is it required to be by written consent?**
- 4. Is mortgagee approval required? Is there a statutory process for obtaining mortgagee approval or providing for a presumptive mortgagee approval?**

Generally, amendment of the association's documents is governed by the documents.

For planned communities, except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain lot owners under G.S. 47F-2-118(b), the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use. (NCGS § 47F-2-117(a)) Further, NCGS § 47F-2-117(d) provides that "any amendment passed pursuant to the provisions of this section or the procedures provided for in the declaration are presumed valid and enforceable." These provisions apply retroactively to older associations.

For condominium associations created on or after October 1, 1986, except in cases of amendments that may be executed by a declarant, the association, or certain unit owners, the declaration may be amended only by affirmative vote of or a written agreement signed by, unit

owners of units to which at least sixty seven percent (67%) of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use. (NCGS § 47C-2-117(a))

USE OF TECHNOLOGY

46. Other than a written document or by voting at a meeting, can a Common Interest Community use the most advanced technology, including e-mail or the Internet to:

- 1. Provide notice to Members of any meeting?;**
- 2. Obtain votes of the Members?;**
- 3. Obtain the consents, acknowledgements or ratifications or Members**
- 4. Obtain the electronic signatures of Members?**

Both the NC Planned Community Act (NCGS § 47F-3-108(a)) and the NC Condominium Act (NCGS § 47C-3-108(a)) permit notice of membership meetings to be sent by electronic means, including by electronic mail to an electronic mailing address, so long as designated in writing by the lot owner. In addition, consents, acknowledgements, and ratifications could be sent as an attachment to an e-mail. While the Uniform Electronic Transactions Act (NCGS § 66-315) might permit broader association use of electronic signatures, all parties would have to agree to conduct transactions by such means. Generally, there is no provision of the NC Planned Community Act or the NC Condominium Act to permit e-mail or internet voting.

The NC Nonprofit Act (NCGS § 55A-8-20) permits participation and voting at Board meetings by any means of communication by which all directors participating may simultaneously hear each other during the meeting. Also, action without a meeting (NCGS § 55A-8-21) may be permitted if all directors concur in writing, which has generally been interpreted to include e-mail or fax.