

A GUIDE
FOR
HOMEOWNER ASSOCIATION
BOARD MEMBERS



Homeowner Associations USA

Course and Materials Developed By Homeowner Associations USA

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10/25/10

Seminar Agenda

First Hour

- ☐ Understanding the Board's Authority, Responsibility and Liability
- ☐ Budgets and Financial Reports
- ☐ Collections, Fines, Liens, Hearings
- ☐ Covenant Enforcement

Second Hour

- ☐ Insurance
- ☐ Maintenance and Reserve Funds
- ☐ How To Conduct Better Meetings
- ☐ Current State Laws & Proposed Legislation

Third Hour

- ☐ Panel Questions & Answers

“The residents who assume positions of responsibility as officers and directors of homeowners associations will be the key to its success or the catalyst for its failure.”

Peter M. Dunbar, Esq

Give Your Association A Checkup

The following are ten performance measures to help determine the health of your homeowner association. Great for self evaluation by the board or for an annual resident survey.

This page may be downloaded free for editing and use by your association. It can be found in the Resources/Articles section of www.hoa-usa.com.

Low	High		How Well Does Your Association Board...
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		1.	Governance - Manage the community according to the governing documents and in accordance with local ordinances, state and federal laws. Maintains records.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		2.	Leadership - Maintain effective and consistent leadership through proper elections, volunteer appointments to committees and training. Also manages human resources.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		3.	Meetings - Conduct meetings with notice, with agendas, with a quorum, in a timely manner and according to Robert's Rules (annual meeting, board and committee meetings).
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		4.	Delinquencies - Keep assessment delinquencies to less than 5%.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		5.	Finance - Produce monthly financial reports, has financial fraud protection measures, and formally adopts a budget that sets the annual assessment.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		6.	Reserves - Maintain adequate reserves and avoids special assessments.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		7.	Insurance - Maintain all necessary insurance coverage.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		8.	Covenant Enforcement - Regularly conduct a site inspection to ensure compliance with the covenants which is fairly enforced with written notice, hearings and fines.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		9.	Maintenance - Have a maintenance program for common areas and other exterior responsibilities (such as painting, roofing, gutters, power washing, landscaping, etc usually found in townhome and condo communities). Awards contracts fairly according to a specification, bid, award, inspection, and warranty program.
① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩		10.	Communications - Keeps residents informed with: a new resident 'welcome package' (covenants, by laws, rules, forms, contact info, rights and responsibilities, etc.); with websites, email distribution lists, and/or newsletters; and provides an opportunity for residents to address the board through a homeowner forum.

Association Governance

Checklist Of Governance Responsibilities:

Legal Name of the Association

This is the 'legal name' found in the Articles of Incorporation.

Sources of Authority

As a Board Member or Director of a homeowner association, you have certain powers, duties and authority that are required in most cases by federal and state laws; local ordinances, and association documents.

Your Association's Documents

- **Read Your Association Documents Carefully!** Every association's documents are different.
- A 'legal' copy of the official documents should be stored in a secure location.
- Keep copies of meeting minutes.
- A 'reference' copy of the documents should be kept in a three ring binder and taken to all meetings.
- It is helpful to prepare a Table of Contents and Index for the documents for quick reference at meetings.
- It may also be helpful to convert the 'hardcopy' documents to electronic format for easy posting and distribution.

Chain of Governing Laws and Documents

- Federal Laws
- NC General Statutes 55A – Non Profit Corporations Act (Table of Contents – Appendix B)
- NC General Statutes 47A – Unit Ownership Act – applies to condominiums after October 1, 1981
- NC General Statutes 47C – North Carolina Condominium Act (Table of Contents – Appendix C) – applies to condominiums after October 1, 1986.
- NC General Statutes 47F– Planned Community Act (Table of Contents – Appendix D) – applies to all other associations
- Local Government Ordinances
- The Association's Declaration of Covenants, Conditions, and Restrictions (Sample Table of Contents – Appendix E)
- The Plat
- The Articles of Incorporation
- The Association's By-laws (Sample Table of Contents – Appendix F)
- Other Rules, Regulations, and Resolutions

Association Governance - Continued

Summary of Typical General Powers and Duties of the Board/Directors

- To exercise for the Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws, or the Articles of Incorporation of the Association to the Association and not reserved to the Members or Declarant by other provisions of this Declaration, the Bylaws or the Articles of Incorporation of the Association;
- To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or, in its discretion, seek damages or other relief from any Owner for violation of such provisions or rules;
- Maintain and improve the Common Area, the Roadway Medians and the Landscaped Rights-of-Way
- To make reasonable rules and regulations for the use and operation of the Common Area.
- To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association
- To set the assessments, whether annual or special, described in this Declaration.
- To enter into agreements or contracts with insurance companies
- To borrow funds to pay costs of operation of the Association, but usually requires homeowner approval.
- To sue or defend in any court of law in behalf of the Association and to provide adequate reserves for repairs and replacement;
- To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors, or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- To retain the services of legal and accounting firms;
- To contract with any third party or any Owner (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association;
- To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder, for the operational protection of the Association or for the enforcement of the controls, covenants, conditions, restrictions and development standards contained herein.

Agreement to Serve On the Board of Directors

I agree to serve on the board of directors for _____
("Association"), and I also agree to be guided by the following principles:

- To attend and participate in all meetings and communications to the best of my ability to be present.
- To respect parliamentary procedure at all meetings; to refrain from speaking out of turn; and to participate in a business-like manner.
- To maintain confidentiality with respect to the board's executive session meetings, including any related discussions or other communications.
- To accept the board's decisions even if I disagree, because I understand there may not be unanimous support for every action taken by the board.
- To promote the goals and interests of the Association in a constructive manner, and not to create unnecessary conflict among the homeowners.
- To disclose to the board on the meeting minutes any financial conflicts of interests.
- To do my best to ensure that the Association's finances are well managed.
- To uniformly enforce the covenants and other governing documents.
- To place the best interests of the Association above my personal interests; the interests of a particular homeowner; or the interests of a faction of homeowners.
- To resign from the Board if I find I can no longer maintain this agreement to serve.

Signed this ___ day of _____, 20__.

Signature: _____

Print Name: _____

Happy Hills Homeowner Association

Important Document Provisions*

These are some of more important document provisions for a fictitious association.

This page may be downloaded free for editing and use by your association. It can be found in the Resources/Articles section of www.hoa-usa.com.

- **(C) Meeting Notices** – 30 days in advance of meeting by written notice
- **(C) Voting Requirements** - the vote of the **majority** of the aggregate votes entitled to be cast by all classes of the Members present, or represented to be cast by all classes of the Members present, or represented by legitimate **proxy**, at a legally constituted meeting at which a **quorum is present**, shall be the act of the Members meeting.
- **(C) Covenant Amendments** – 75% of total eligible votes for major amendments; 51% for minor amendments; effective when recorded.
- **(C) Duration** – until **2050** and may be extended for periods of **10** years by majority vote.
- **(BL) Annual Meeting** – **October**
- **(BL) Special Meetings** – May be called at any time by the President or Board or shall be called upon **written request of 25%** of voting members.
- **(BL) Quorum** - the presence at the meeting of members entitled to cast, or of proxies entitled to cast, **one-tenth (1/10)** of the votes of each class of membership shall constitute a quorum
- **(BL) Proxies** - At all meetings of members, each member may vote in person or by' proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Unit.
- **(BL)** The affairs of this Association shall be managed by a Board of not less **than three (3) directors nor more than seven (7)**, who need not be members of the Association.
- **Board Terms** - at each annual meeting thereafter the members shall elect one (1) director for a term of three (3) years. At subsequent annual meetings the Board may be increased in size by adding up to two (2) additional members in the two (2) and three (3) year service categories.
- **(BL) Board Meetings** - at least quarterly without notice
- **(BL) Special Board Meetings** - called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.
- **(BL) Board Quorum** - majority of the directors present
- **(BL) Nominations** – By Board appointed nominating committee consisting of a Chairperson who shall be a member of the Board of Directors, and two or more members of the Association. Nominations from the floor at the annual meeting.
- **(BL) Elections** – secret ballot, proxies may be voted, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.
- **(BL) By-Laws Amendments** – **may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy**

Budgets and Financial Reports

Checklist of Financial Responsibilities

- ☐ Adoption of annual operating budget
- ☐ Collect assessments and special assessments
- ☐ Fiduciary responsibility to manage accounts and disburse funds
- ☐ Maintain an adequate reserve fund
- ☐ Distribute an association “income and expense statement” and “balance sheet”
- ☐ Provide upon request of a lot owner, a statement of account.
- ☐ File tax returns
- ☐ Conduct an annual financial “review”, “compilation”, or “audit” as required and according to GAAP. (Generally Accepted Accounting Practices)

While not required, the NCGS § 47C-3-118 contains this provision. 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 unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

An explanation of the differences in an **audit, compilation and review** can be found in the Resources/Articles section of www.hoa-usa.com.

Association Finances begin with the Annual Budget since it is the basis for determining the amount of regular assessments and the possible need for special assessments.

Steps in Developing the Annual Budget

- Review budget line items and expense history
- Estimate operating expenses for next fiscal budget year
- Estimate non-assessment revenues. Some examples are revenue from clubhouse rental, fees from non-member use of amenities, sale of timber or firewood, etc.
- Review reserves for future major capital expenditures and develop a 5-10 year budget estimate.
- Total the operating expenses and subtract any offsetting revenues to determine the annual operating budget.
- Add the amount required for annual reserve fund. A Reserve Study can assist the Board in establishing reasonable reserves.
- Total the operating budget and reserve budget estimates.
- Divide the total budget among the number of residents to determine the annual assessment. (Check your association’s legal documents. There may be a restriction on the amount of dues increase.
- Review the association documents regarding annual meeting, budget review and approval by members, and notice of annual assessment and or special assessments.

Covenant Enforcement

Checklist Of Covenant Enforcement Responsibilities:

- ☐ Communicate Association Rules & Regulations to homeowners and residents
- ☐ Conduct regularly scheduled community inspections
- ☐ Enforce covenant/rule violations fairly and reasonably
- ☐ Have a written procedure for covenant enforcement

Covenant enforcement is one of the most difficult aspects of running a homeowners association. The Board has a duty to reasonably enforce the covenants and rules, and avoid risking liability to the board, committee members or to the association. At the same time, board members are residents with neighbors, and friends in the community. Covenant enforcement can result in personal attacks, disharmony, and polarization. Boards should not become involved in disputes between neighbors. Whenever possible, the Board should refer enforcement of covenant violations to local, state, or federal authorities. For example, municipal code enforcement of abandoned cars and animal control, state enforcement of environmental issues such as erosion control, etc.

Types of Restrictive Covenants - This list is by no means inclusive

- Architectural Control – exterior control
 - Fences
 - Sheds and Outbuildings
 - Boat & RV Parking
 - Satellite Dishes
 - Mailboxes
 - Exterior Colors
 - Building Materials
 - Pools
 - Playground Equipment
 - Landscaping
- Pet Restrictions
- Yard Sales
- Noise
- Leasing Restrictions
- Age Restrictive
- Single Family Use
- Residential Use/Business Use

Enforcement Considerations

- Magnitude of the violation
- Legal costs of enforcement
- Time and emotional demands on board, staff, or residents
- Time required for recovery through legal proceedings
- Probability of success of enforcement (Risk vs. Reward)

Covenant Enforcement - Continued

Practical Approaches to Voluntary Compliance

- Educate and Notify
- Review rules periodically
- Act promptly
- Be Reasonable
- Provide Opportunity to Comply
- Provide information and guidelines on the rule
- Be consistent and uniform
- Exceptions can be justified in some cases

Legal Issues

- Does the Association and/or Board have the authority to enforce?
- Is it a violation of the restrictive covenants?
- Is the enforcement fair?
 - Notice
 - Hearing
 - Notice of Decision
 - Compliance with Law
- What are the member's defenses to enforcement?
 - Due Process
 - Laches – association waited too long to enforce
 - Waiver – previous failure to enforce
 - Selective Enforcement
 - Lack of Notice

Court Litigation vs. Alternative Dispute Resolution

- Court Litigation – may be more cost effective and expedient in clear cut violations.
 - Service of Complaint
 - Filing of Complaint
 - Discovery
 - Trial
 - Judgment
- Mediation or Alternative Dispute Resolution – may not set the 'precedent' for future violations.
 - Less time to resolve
 - Less expensive
 - Less adversarial
 - Parties must agree to arbitration
 - Generally no pre-trial discovery
 - Limited right of appeal

Three Major Remedies

- Monetary Relief – for reimbursement of costs and or fine for penalty
- Temporary Restraining Order
- Preliminary and Permanent Injunction

Best Practice for Covenant Enforcement and Fines

Follow a written or adopted policy based on provisions in the Association's documents or State Law (N.C. General Statutes 47F-3-107.1)

- (Optional) Notify the homeowner (and the resident if rented or leased) with a phone call, note, or email 'friendly reminder' of the Association's Rules.
- (Optional) Send a **Warning** Letter of Violation that includes the following:
 - Clearly state the nature of the violation
 - Specifically reference the provision in the Association documents that makes the offense a violation.
 - Provide a specific date that is a deadline for remedy. The deadline should take into consideration the time required for remedy. Two weeks or allowing two weekends is typical.
- Send a **Final** Letter of Violation:
 - Authority of the Association to enforce and fine.
 - Clearly state the nature of the violation
 - Specifically reference the provision in the Association documents that makes the offense a violation.
 - Provide a specific date that is a deadline for remedy. The deadline should take into consideration the time required for remedy. Two weeks or allowing two weekends is typical.
 - State the consequences of non-compliance. Loss of services and privileges, amount of fine, costs of enforcement, etc.
 - Provide a specific date, time, and location when the homeowner may attend a 'show cause' hearing and that the homeowner has the right to be represented by an attorney. Allowing 10 days between the date of the letter and the hearing date is reasonable.
- Conduct a hearing before the Board or an adjudicatory panel
 - The location of the hearing should be in a suitable location other than a home.
 - The homeowner should be given an opportunity to present their case and may then be excused
 - The hearing panel should confirm whether or not a violation has occurred and set a **reasonable** amount of the fine. (The fine may not exceed \$100/day/violation.)
- Notify the homeowner of the decision of the hearing panel, the amount of the fine, the date that fining will commence, and the right of appeal to the Board if the hearing was held before an adjudicatory panel.
- Initiate Fining – The Board must wait 5 days after the hearing before imposing the fine. This time is afforded the homeowner as a last opportunity to remedy without a fine. Thereafter, the homeowner should receive a monthly invoice for the fine.

Best Practice for Covenant Enforcement and Fines - Continued

- The Board may file a lien for past due fines which may be foreclosed by judicial foreclosure. Non-judicial foreclosure procedure is reserved for collection of assessments. It is recommended that the Board use an attorney when proceeding with lien and foreclosure measures. The attorney fee limitation of \$1,200 for uncontested debt collection associated with non payment of assessments does not apply to liens and foreclosures.

North Carolina General Statutes

§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.

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 shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The lot owner charged shall be given notice of the charge, 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 one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. 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. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body. (1997-456, s. 27; 1998-199, s. 1; 2005-422, s. 4.)

Consideration of Federal Laws

- Title VIII of the Civil Rights Act of 1968
- Fair Housing Amendments Act of 1988
- Americans with Disabilities Act of 1990

Insurance

Checklist of Financial Responsibilities

- ☐ Maintain appropriate types and levels of insurance coverage.

Types of Insurance

- General Liability Insurance
- Property Damage Insurance
- Directors and Officers Insurance
- Workman's Compensation Insurance – for employees and subcontractors
- Fidelity Bond

Liability Limitations of the Board/Officers

From Sample Covenants - Neither Declarant, nor any Member on the Board nor any directors on the Board (or any one of them) nor the officers (if any) of Declarant or the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board and all members of the Architectural Control Committee from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board and such Architectural Control Committee of their duties and obligations except for any such loss, cost, expense, damage, liability, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

Fidelity Bonds

A Fidelity Bond is a form of insurance protection that covers policyholders for losses that they incur as a result of fraudulent acts by specified individuals.

Often an association will rely on a management company's bond, but what they may not be aware of is that this often only protects the owner of the management company from theft by an employee. It might not protect the association if it is the owner who is, in fact, stealing the funds, as it appears to be in some of the above cases. An association should always have its own Fidelity Bond on everyone who has access to the funds.

Maintenance & Reserve Funds

Checklist of Service & Maintenance Responsibilities

- ☐ Maintain, protect, and enhance the value of common areas
- ☐ Ensure the safety of residents, guests, and employees
- ☐ Review governing documents and other laws regarding association duties, authority, and powers to protect, inspect, and maintain assets.
- ☐ Maintain exterior elements of townhomes/condominiums
- ☐ Develop and administer maintenance management controls
- ☐ Award and administer contracts for services such as management, landscaping, pool services, security, etc.
- ☐ Periodically prepare/update the Reserve Study

Every Association Has Unique Maintenance Requirements

- Private Streets
- Parking Lots
- Parking Garages
- Sidewalks
- Tennis Courts
- Swimming Pools
- Playground Equipment
- Clubhouses, Cabanas, Gazebos, Picnic Shelters
- Retention Ponds, Lakes, & Dams
- Retaining Walls and Coastal Erosion Protection
- Sprinkler Systems
- Lighting
- Mailboxes
- Signage, Security Systems and Gatehouses
- Wells, Wastewater and Drainage Systems
- Marinas, Boats, and Boat Docks
- Exterior Walls & Balconies
- Roofs and Gutters
- Vehicles, Landscape Equipment, Office Equipment
- Condominium HVAC Systems
- Condominium Elevators

Maintenance & Services - Continued

Maintenance Management Controls

- Inventory of Assets
- Schedule/Record of routine, preventive and emergency maintenance
- Forms/Records for maintenance requests, work orders, and completion.
- Plan for protection of assets in event of hurricanes, floods, etc.
- Storage and protection of important documents/items such as site plans, utility and shut-off locations, construction drawings, security controls, warranties, manuals, computer passwords, keys, etc.

Checklist of Reserve Study Issues

- ☐ Maintain, protect, and enhance the value of common areas
- ☐ Ensure the safety of residents, guests, and employees

Checklist of Major Contract Procedures

- ☐ Develop bid specifications
- ☐ Invite contractors to submit sealed bids
- ☐ Award a contract
- ☐ Monitor performance
- ☐ Inspect final project

Depending on the scope and amount of the contract, the association may want to also contract with an engineer, architect, or professional project manager.

Meetings

The association documents typically provide specific requirements for types of meetings and requirements for notice to members.

- Annual Meeting
- Board Meetings
- Special Meetings
- Meeting Notices
- Meeting Agendas (Order of Business)
- Meeting Minutes
- Robert's Rules (Parliamentary Procedure)

Purpose of the Annual Meeting – Election of Directors, present financial reports, ratify annual budget, and other matters requiring a vote of the membership.

Quorum Defined - The minimal number of officers and members of a committee or organization, usually a majority, who must be present for valid transaction of business.

Proxy Defined - An agent legally authorized to act on behalf of another party. Homeowners not attending an association's annual meeting may choose to vote by proxy by allowing someone else to cast votes on their behalf.

North Carolina General Statutes

- **North Carolina Condominium Act (47C) and Planned Community Act (47F)**
 - 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.
 - Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.
- **The North Carolina Non-Profit Corporations Act (55A)**
 - Requires that corporations hold an annual meeting.
 - Requires that an association must maintain a registered office and registered agent and is subject to service on the Secretary of State
 - Provides for Vacancies on the Board.
 - Requires that the corporation shall keep as permanent records minutes of all meetings, accounting records, and record of members. Members are entitled to inspect and copy records.
 - Grants certain emergency powers:
 - Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
 - Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

Meetings - Continued

- Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.
- Corporate action taken in good faith during an emergency under this section, to further the ordinary affairs of the corporation, binds the corporation and the fact that the action is taken pursuant to this section shall not be used to impose liability on a corporate director, officer, employee, or agent.
- An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Community & Communications

- Provide new members with a “welcome package”.
- Provide lot owners an opportunity to speak at board meetings.
- Provide notice of annual meetings, changes in assessments, or special assessments.
- Encourage member participation on boards, committees, and in meetings.
- Communicate news to members (Email lists, Newsletters, and Websites).
- Provide the names and address of board members to residents.

Your homeowner association’s president flips burgers on the grill while your neighbors help themselves to potato salad and beers from the keg set up in the courtyard corner. The association members have turned out in record numbers to this community building event, and you, as one of the board members, feel pleased with the party’s success. Before you raise your glass to toast your neighbor, however, you should consider whether the proper precautions have been taken to protect your association from any liability that could arise from serving alcoholic beverages at your event.

Of course, the easiest way to avoid liquor liability is to abstain from serving alcoholic beverages at association functions. However, the reality remains that many individuals will attend an event that provides alcoholic beverages while religiously avoiding “dry” social events. In the face of this reality, a board may, despite all advice to the contrary, still decide to serve alcoholic drinks at their association’s gatherings. It should be remembered that an association that chooses to serve or sell alcohol at its events ignores the issue of liquor liability at its – and its members’ -- peril.

The Law

Every state has laws that apportion liability in cases where an intoxicated guest leaves a social event and causes personal or property damage to a third party.

Checklist for Associations with Employees

- ☐ Develop and Maintain a Personnel Manual or Employee Handbook
- ☐ Compliance with Federal, State, and Local Laws
- ☐ Job Descriptions
- ☐ Performance Plans, Reviews, & Compensation
- ☐ Recruitment, Screening, & Selection
- ☐ Training and Development
- ☐ Grievance and Dismissal Procedures
- ☐ Maintain Employee Records

APPENDIX A

Order of Business

Based on Robert's Rules of Order Newly Revised (10th Edition)

Contributed By: Jim Slaughter, Attorney at Law, CCAL
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- Part of any meeting should be a systematic plan for the orderly conduct of business.
- The sequence in which business is taken up during a meeting is known as the "Order of Business."
- The Order of Business is a blueprint for the meeting and typically has the following components:

Opening the Meeting

The presiding officer should never call the meeting to order until a quorum is present. A quorum is the number of members entitled to vote who must be present in order for business to be legally transacted. Quorum is typically defined in the governing documents.

Once a quorum is present, the presiding officer calls the meeting to order by stating, "The meeting will come to order."

Approval of Minutes

In meetings when minutes are to be approved, the minutes are typically distributed to all members so that they do not have to be read aloud. Corrections and approval are normally done by unanimous consent. That is, the presiding officer can ask, "Is there any objection to approving the minutes as read [or distributed]." If there is no objection, the minutes are approved.

Reports of Officers, Boards, and Standing Committees

The first substantive item of business in meetings is typically hearing from the officers and established boards and committees. The logic in this order of arrangement is to give priority to the items of business from the leadership. Typically, the presiding officer learns in advance who needs to report and only calls on those officers, boards, and committees that have reports.

Reports are generally for information only. In such instances, no motion is necessary following the reports unless there are recommendations to be implemented. A motion "to adopt" or "to accept" a report is seldom wise except when the report is to be issued or published in the name of the organization. On the other hand, it is common that the reporting member end by making a motion if there is a specific recommendation for action.

For example, the Facilities Committee may have studied the buildings and grounds. In her report, the committee chairman might thank the members of the committee for their hard work and explain in detail the committee's position and reasoning. At the end of her report, the committee chair would close by saying something to the effect of, "On behalf of the committee, I move that Building X be renovated at a cost not to exceed

\$50,000.00."

Reports of Special Committees

Unlike standing committees established in the governing documents, special committees do not have continual existence. Instead, special committees exist solely for the purpose of a specific project. For example, a special committee might be created to plan a specific function or event. Special committees typically go out of existence upon their final report.

Unfinished Business

Unfinished business refers to matters carried over from a previous meeting. This category of business is sometime incorrectly referred to as "old business." "Old business" is a misnomer in that unfinished business is not simply items that have been discussed previously. Instead, unfinished business items typically fall into one of several specific categories. For organizations that meet at least four times a year, unfinished business may include: (1) any matter that was pending when the previous meeting adjourned; (2) any matters on the previous meeting's agenda that were not reached; or (3) matters that were postponed to the present meeting.

The presiding officer should know if there are any items to be considered under unfinished business. As a result, the presiding officer should not ask, "Is there any unfinished business?" Instead, the presiding officer should simply state the question on the first item of business. If there is no unfinished business, the presiding officer should skip this category of business.

New Business

Much of the work in a meeting is accomplished during the heading of new business. In this category of business, members can introduce any new item of for consideration (unless there are notice requirements that must be considered). In some instances, the presiding officer may be unaware of what items of business will arise under new business.

The presiding officer introduces the heading of new business by asking, "Is there any new business?" Any member can then introduce new items of business by making a motion and obtaining a second. Following the consideration of each item, the chair repeatedly asks, "Is there any further new business?" This process continues until there are no additional business items.

Closing the Meeting

In most assemblies the presiding officer can adjourn the meeting without waiting for a motion to adjourn. If all items of business have been considered, the presiding officer can ask, "Is there any further business?" If there is no response, the presiding officer simply states, "Since there is no further business, the meeting is adjourned."

If custom or tradition requires that a motion to adjourn be made, the presiding officer can ask, "Is there a motion to adjourn?" Once the motion is made and seconded, the presiding officer can ask, "Is there any objection to adjourning the meeting? Hearing no objection, the meeting is adjourned."

Guide for Preparing Minutes

Based on Robert's Rules of Order Newly Revised (10th Edition)

Contributed By: Jim Slaughter, Attorney at Law, CCAL
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Minutes are a record of what was done at the meeting NOT what was said by members or guests.

Include:

First Paragraph:

- Kind of meeting (regular, special, adjourned)
- Name of board
- Date and time of meeting
- Place of meeting, if varies
- Fact that Chairman and Clerk were present or name of substitute
- Whether minutes of previous meeting were read and approved

Separate paragraph for each subject matter with name of mover:

- All main motions or motions to bring a main question again before the assembly (except any withdrawn, see below) stating
 - The wording in which adopted or disposed of
 - The disposition of motion (including amendments or motions)
- Secondary motions that were not lost or withdrawn
- All notices of motion
- All points of order and appeals, whether sustained or lost

Last Paragraph:

- Hour of adjournment

Number of votes if count ordered or ballot vote

Names and votes if roll call vote

Signature of Clerk ("Respectfully submitted" unnecessary)

Do Not Include:

- Seconder's name
- Remarks of guest speakers
- Motions that were withdrawn (see RONR § 48, page 452 for exceptions)
- Personal opinion on anything said or done

(SAMPLE) MINUTES

HAPPY HILLS HOMEOWNERS ASSOCIATION, INC BOARD OF DIRECTORS REGULAR MEETING

7 p.m., Tuesday, January 1, 2000, at the Manager's Conference Room.

Call To Order - Designation of Quorum -- The meeting was called to order at 7:07 p.m. Members present were Jane Doe, Tom Smith, Susan Williams, Jim Richardson, Claus Hall, and Bill Jones. Ned Miller represented the Grounds Committee. Chris Davis represented ABC Management.

Homeowner Forum - Mr. Jones, presenting concerns of several homeowners, asked about the use to which the Survey would be put. He was told that the results would be evaluated both by the Architectural Control Committee and the Board before deciding whether or not to revise the architectural guidelines.

Approval of Prior Meeting Minutes

- **Minutes of 3/22:** In line 5, change "doors" to "front doors." Under Section VIII. New Business, change "the Architectural Committee" to "Bill Jones." The Minutes were approved with these corrections by unanimous consent.

Committee Reports

- **Grounds** -- In response to an inquiry from Grounds Committee chairman Ned Hall, the Board unanimously approved a motion by Mr Hall that the Grounds Committee review all current landscaping guidelines and add suggestions for a clear policy for dealing with requests for tree removal. In response to a request by one homeowner for permission to remove several trees on the common area, with the cost being shared with the Association, the Board unanimously voted to deny the request.
- **Architectural** – One architectural change request was approved, but thirteen others, submitted by seven different homeowners, for changes to front doors or garage doors, were denied pending possible revision of guidelines.

Treasurer's Report – Noting an expense for restoration of the goose-wire behind some west-side units, Ms Williams moved that the goose-wire no longer be maintained at the HOA's expense. The motion carried by a 3-2 vote. No exception was taken to the financials as distributed.

Management Report

- **Door Survey Interim Report** – Mr Davis reported that, with two weeks remaining until the deadline, 32 out of 50 surveys have been returned. None have yet been tabulated. Mr. Richardson moved that a reminder be sent to all those who have not yet responded. Unanimously approved.

Unfinished Business

- **Paving of Circle at 789-791:** calculation in order to pro-rate cost – Mr. Smith presented his calculations of total frontage road surface area and cost per square

foot, with calculations of the number of square feet of the final paving project and the projected cost if it had been done as part of the original paving package. He concluded that the job should have cost \$1851 less, and that ABC Management therefore owes Happy Hills Association this amount. It was moved that ABC Management be given an opportunity to review the calculations and either reimburse the Association for \$1,851 or provide a basis for an alternative amount...Unanimously approved.

- Paint specs: Mr. Jones presented painting specifications he had developed in consultation with painters and paint companies.

New Business

Next Meeting Date & Place:

June 6, 2006 at the Manager's Conference Room at 7:00 p.m.

The Meeting adjourned at 9:30 p.m.

Board President

Appendix B
NC General Statutes – Chapter 55A
North Carolina Nonprofit Corporation Act.
(A link to the full text may be found at www.HOA-usa.com)
Click on Resources and then click on HOA Laws

Table of Contents

Article 1.	8
General Provisions.	8
Part 1. Short Title and Reservation of Power.	8
§ 55A 1 01. Short title.	8
§ 55A 1 02. Reservation of power to amend or repeal.	8
§§ 55A 1 03 through 55A 1 19. Reserved for future codification purposes.	8
Part 2. Filing Documents.	8
§ 55A 1 20. Filing requirements.	8
§ 55A 1 21. Forms.	8
§ 55A 1 22. Filing, service, and copying fees.	9
§§ 55A 1 22.1 through 55A 1 27: Repealed by Session Laws 2001 358, s. 7(b), effective January 1, 2002.	10
§ 55A 1 28. Certificate of existence.	10
§ 55A 1 29: Repealed by Session Laws 2001 358, s. 7(b).	11
Part 3. Secretary of State.	11
§ 55A 1 30. Powers.	11
§ 55A 1 31. Interrogatories by Secretary of State.	11
§ 55A 1 32. Penalties imposed upon corporations, officers, and directors for failure to answer interrogatories.	11
§ 55A 1 33. Information disclosed by interrogatories.	11
§§ 55A 1 34 through 55A 1 39. Reserved for future codification purposes.	12
Part 4. Definitions.	12
§ 55A 1 40. Chapter definitions.	12
§ 55A 1 41. Notice.	14
§§ 55A 1 42 through 55A 1 49. Reserved for future codification purposes.	16
Part 5. Private Foundations.	16
§ 55A 1 50. Private Foundations.	16
§§ 55A 1 51 through 55A 1 59. Reserved for future codification purposes.	16
Part 6. Judicial Relief.	16
§ 55A 1 60. Judicial relief.	16
Article 2.	17
Organization.	17
§ 55A 2 01. Incorporators.	17
§ 55A 2 02. Articles of incorporation.	17
§ 55A 2 03. Incorporation.	18
§ 55A 2 04. Reserved for future codification purposes.	19
§ 55A 2 05. Organization of corporation.	19
§ 55A 2 06. Bylaws.	19
§ 55A 2 07. Emergency bylaws.	19

Article 3.	20
Purposes and Powers.....	20
§ 55A 3 01. Purposes.	20
§ 55A 3 02. General powers.	20
§ 55A 3 03. Emergency powers.	21
§ 55A 3 04. Ultra vires.....	22
§ 55A 3 05. Exercise of corporate franchises not granted.	22
§ 55A 3 06. Special powers; public parks and drives and certain recreational corporations.	23
§ 55A 3 07. Certain corporations subject to Public Records Act and Open Meetings Law...23	
Article 4.	23
Names.	23
§§ 55A 4 01 through 55A 4 05: Repealed by Session Laws 2001 358, s. 23, effective January 1, 2002.....	23
Article 5.	24
Office and Agent.....	24
§ 55A 5 01. Registered office and registered agent.	24
§ 55A 5 02: Repealed by Session Laws 2001 358, s. 48.	24
§ 55A 5 02.1: Transferred to § 55A 16 23 by Session Laws 2001 358, s. 48(d).....	24
§§ 55A 5 03 through 55A 5 04: Repealed by Session Laws 2001 358, s. 48(c), effective January 1, 2002.....	24
Article 6.	24
Members and Memberships.	24
Part 1. Admission of Members.	24
§ 55A 6 01. Members.....	24
§§ 55A 6 02 through 55A 6 19. Reserved for future codification purposes.	24
Part 2. Members' Rights and Obligations.	24
§ 55A 6 20. Designations, qualifications, rights, and obligations of members.	24
§ 55A 6 21. Prohibition of stock.	25
§ 55A 6 22. Member's liability to third parties.	25
§ 55A 6 23. Member's liability for dues, assessments, and fees.	25
§ 55A 6 24. Creditor's action against member.	25
§§ 55A 6 25 through 55A 6 29. Reserved for future codification purposes.	25
Part 3. Resignation and Termination.	25
§ 55A 6 30. Resignation.....	25
§ 55A 6 31. Termination, expulsion, and suspension.	25
§§ 55A 6 32 through 55A 6 39. Reserved for future codification purposes.	26
Part 4. Delegates.	26
§ 55A 6 40. Delegates.	26
Article 7.	26
Members' Meetings and Voting; Derivative Proceedings.	26
Part 1. Meetings and Action Without Meetings.....	26
§ 55A 7 01. Annual and regular meetings.	26
§ 55A 7 02. Special meeting.	26
§ 55A 7 03. Court ordered meeting.	27
§ 55A 7 04. Action by written consent.	27
§ 55A 7 05. Notice of meeting.....	28
§ 55A 7 06. Waiver of notice.....	28
§ 55A 7 07. Record date.	29

§ 55A 7 08. Action by written ballot.	29
§§ 55A 7 09 through 55A 7 19. Reserved for future codification purposes.	30
Part 2. Voting.	30
§ 55A 7 20. Members' list for meeting.	30
§ 55A 7 21. Voting entitlement generally.	31
§ 55A 7 22. Quorum requirements.	31
§ 55A 7 23. Voting requirements.	32
§ 55A 7 24. Proxies.	32
§ 55A 7 25. Voting for directors; cumulative voting.	33
§ 55A 7 26. Other methods of electing directors.	33
§ 55A 7 27. Corporation's acceptance of votes.	33
§ 55A 7 28. Reserved for future codification purposes.	34
§ 55A 7 29. Reserved for future codification purposes.	35
Part 3. Voting Agreements.	35
§ 55A 7 30. Voting agreements.	35
§§ 55A 7 31 through 55A 7 39. Reserved for future codification purposes.	35
Part 4. Derivative Proceedings.	35
§ 55A 7 40. Derivative proceedings.	35
Article 8.	36
Directors and Officers.	36
Part 1. Board of Directors.	36
§ 55A 8 01. Requirement for and duties of board.	36
§ 55A 8 02. Qualifications of directors.	36
§ 55A 8 03. Number of directors.	37
§ 55A 8 04. Election, designation, and appointment of directors.	37
§ 55A 8 05. Terms of directors generally.	37
§ 55A 8 06. Staggered terms for directors.	38
§ 55A 8 07. Resignation of directors.	38
§ 55A 8 08. Removal of directors elected by members or directors.	38
§ 55A 8 09. Removal of designated or appointed directors.	39
§ 55A 8 10. Removal of directors by judicial proceeding.	40
§ 55A 8 11. Vacancy on board.	40
§ 55A 8 12. Compensation of directors.	41
§§ 55A 8 13 through 55A 8 19. Reserved for future codification purposes.	41
Part 2. Meetings and Action of the Board.	41
§ 55A 8 20. Regular and special meetings.	41
§ 55A 8 21. Action without meeting.	41
§ 55A 8 22. Notice of meetings.	41
§ 55A 8 23. Waiver of notice.	42
§ 55A 8 24. Quorum and voting.	42
§ 55A 8 25. Committees of the board.	42
§§ 55A 8 26 through 55A 8 29. Reserved for future codification purposes.	43
Part 3. Standards of Conduct.	43
§ 55A 8 30. General standards for directors.	43
§ 55A 8 31. Director conflict of interest.	44
§ 55A 8 32. Loans to or guaranties for directors and officers.	45
§ 55A 8 33. Liability for unlawful loans or distributions.	45
§§ 55A 8 34 through 55A 8 39. Reserved for future codification purposes.	46

Part 4. Officers.....	46
§ 55A 8 40. Officers.....	46
§ 55A 8 41. Duties of officers.....	46
§ 55A 8 42. Standards of conduct for officers.	46
§ 55A 8 43. Resignation and removal of officers.	47
§ 55A 8 44. Contract rights of officers.	47
§§ 55A 8 45 through 55A 8 49. Reserved for future codification purposes.	47
Part 5. Indemnification.....	47
§ 55A 8 50. Policy statement and definitions.	48
§ 55A 8 51. Authority to indemnify.....	49
§ 55A 8 52. Mandatory indemnification.....	49
§ 55A 8 53. Advance for expenses.	50
§ 55A 8 54. Court ordered indemnification.	50
§ 55A 8 55. Determination and authorization of indemnification.	50
§ 55A 8 56. Indemnification of officers, employees, and agents.	51
§ 55A 8 57. Additional indemnification and insurance.	51
§ 55A 8 58. Application of Part.	52
§ 55A 8 59. Reserved for future codification purposes.	52
Part 6. Immunity.	52
§ 55A 8 60. Immunity.....	52
Article 10.	53
Amendment of Articles of Incorporation and Bylaws.	53
Part 1. Amendment of Articles of Incorporation.	53
§ 55A 10 01. Authority to amend.	53
§ 55A 10 02. Amendment by board of directors.	53
§ 55A 10 03. Amendment by directors and members.	54
§ 55A 10 04. Class voting by members on amendments.	55
§ 55A 10 05. Articles of amendment.	55
§ 55A 10 06. Restated articles of incorporation.	56
§ 55A 10 07. Effect of amendment.	57
§§ 55A 10 08 through 55A 10 19. Reserved for future codification purposes.	57
Part 2. Bylaws.	57
§ 55A 10 20. Amendment by directors.....	57
§ 55A 10 21. Amendment by directors and members.	57
§ 55A 10 22. Class voting by members on amendments.	58
§§ 55A 10 23 through 55A 10 29. Reserved for future codification purposes.	59
Part 3. Articles of Incorporation and Bylaws.....	59
§ 55A 10 30. Approval by third persons.....	59
Article 11.	59
Merger.....	59
§ 55A 11 01. Approval of plan of merger.....	59
§ 55A 11 02. Limitations on mergers by charitable or religious corporations.	60
§ 55A 11 03. Action on plan.....	61
§ 55A 11 04. Articles of merger.	62
§ 55A 11 05. Effect of merger.	63
§ 55A 11 06. Merger with foreign corporation.....	64
§ 55A 11 07. Bequests, devises, and gifts.....	65
§ 55A 11 08. Merger with business corporation.....	65

§ 55A 11 09. Merger with unincorporated entity.	65
§ 55A 11 10. Merger with certain charitable or religious corporation or hospital authority.	69
Article 12.	71
Transfer of Assets.	71
§ 55A 12 01. Sale of assets in regular course of activities and mortgage of assets.	71
§ 55A 12 02. Sale of assets other than in regular course of activities.	71
Article 13.	72
Distributions.	72
§ 55A 13 01. Prohibited distributions.	72
§ 55A 13 02. Authorized distributions.	73
Article 14.	73
Dissolution.	73
Part 1. Voluntary Dissolution.	74
§ 55A 14 01. Dissolution by incorporators or directors prior to commencement of activities.	74
§ 55A 14 02. Dissolution by directors, members, and third persons.	74
§ 55A 14 03. Plan of dissolution.	75
§ 55A 14 04. Articles of dissolution.	75
§ 55A 14 05. Revocation of dissolution.	76
§ 55A 14 06. Effect of dissolution.	76
§ 55A 14 07. Known claims against dissolved corporation.	77
§ 55A 14 08. Unknown and certain other claims against dissolved corporation.	77
§ 55A 14 09. Enforcement of claims.	78
§§ 55A 14 10 through 55A 14 19. Reserved for future codification purposes.	79
Part 2. Administrative Dissolution.	79
§ 55A 14 20. Grounds for administrative dissolution.	79
§ 55A 14 21. Procedure for and effect of administrative dissolution.	79
§ 55A 14 22. Reinstatement following administrative dissolution.	79
§ 55A 14 23. Appeal from denial of reinstatement.	80
§ 55A 14 24. Inapplicability of Administrative Procedure Act.	81
§§ 55A 14 25 through 55A 14 29. Reserved for future codification purposes.	81
Part 3. Judicial Dissolution.	81
§ 55A 14 30. Grounds for judicial dissolution.	81
§ 55A 14 31. Procedure for judicial dissolution.	82
§ 55A 14 32. Receivership.	82
§ 55A 14 33. Decree of dissolution.	83
§§ 55A 14 34 through 55A 14 39. Reserved for future codification purposes.	83
Part 4. Miscellaneous.	83
§ 55A 14 40. Disposition of amounts due to unavailable members and creditors.	83
Article 14A.	83
Reorganization.	83
§ 55A 14A 01. Fundamental changes in reorganization proceedings.	83
Article 15.	84
Foreign Corporations.	84
Part 1. Certificate of Authority.	84
§ 55A 15 01. Authority to conduct affairs required.	84
§ 55A 15 02. Consequences of conducting affairs without authority.	85
§ 55A 15 03. Application for certificate of authority.	86
§ 55A 15 04. Amended certificate of authority.	87

§ 55A 15 05. Effect of certificate of authority.....	87
§ 55A 15 06: Repealed by Session Laws 2001 358, s. 22, effective January 1, 2002.....	87
§ 55A 15 07. Registered office and registered agent of foreign corporation.....	87
§§ 55A 15 08 through 55A 15 10: Repealed by Session Laws 2001 358, s. 48(c), effective January 1, 2002.	88
§§ 55A 15 11 through 55A 15 19. Reserved for future codification purposes.....	88
Part 2. Withdrawal.	88
§ 55A 15 20. Withdrawal of foreign corporation.	88
§ 55A 15 21. Withdrawal of foreign corporation by reason of a merger, consolidation, or conversion.	89
§§ 55A 15 22 through 55A 15 29. Reserved for future codification purposes.....	90
Part 3. Revocation of Certificate of Authority.....	90
§ 55A 15 30. Grounds for revocation.	90
§ 55A 15 31. Procedure and effect of revocation.	91
§ 55A 15 32. Appeal from revocation.	91
§ 55A 15 33. Inapplicability of Administrative Procedure Act.	92
Article 16.	92
Records and Reports.	92
Part 1. Records.	92
§ 55A 16 01. Corporate records.	92
§ 55A 16 02. Inspection of records by members.	93
§ 55A 16 03. Scope of inspection rights.	93
§ 55A 16 04. Court ordered inspection.	94
§ 55A 16 05. Limitations on use of membership list.	94
§§ 55A 16 06 through 55A 16 19. Reserved for future codification purposes.....	95
Part 2. Reports.....	95
§ 55A 16 20. Financial statements for members.....	95
§ 55A 16 21. Notice of indemnification to members.....	95
§ 55A 16 22: Repealed by Session Laws 1995, c. 539, s. 8.	95
§ 55A 16 23. Principal office address.....	95
Article 17.	96
Transition and Curative Provisions.....	96
§ 55A 17 01. Applicability of Chapter.....	96
§ 55A 17 02. Certain religious, etc., associations deemed incorporated.	96
§ 55A 17 03. Saving provisions.....	97
§ 55A 17 04. Severability.	97
§ 55A 17 05. Validation of amendments to corporate charters extending corporate existence; limitation of actions; intent.	97

Appendix C
NC General Statutes – Chapter 47C
North Carolina Condominium Act
(A link to the full text may be found at www.HOA-USA.com)
Click on Resources and then click on HOA Laws
Table of Contents

Article 1.	3
General Provisions.	3
§ 47C 1 101. Short title.	3
§ 47C 1 102. Applicability.	3
§ 47C 1 103. Definitions.	3
§ 47C 1 104. Variation; power of attorney or proxy to declarant.	6
§ 47C 1 105. Separate titles and taxation.	7
§ 47C 1 106. Applicability of local ordinances, regulations, and building codes.	7
§ 47C 1 107. Eminent domain.	7
§ 47C 1 108. Supplemental general principles of law applicable.	8
§ 47C 1 109. Inconsistent time share provisions.	8
Article 2.	8
Creation, Alteration, and Termination of Condominiums.	8
§ 47C 2 101. Execution and recordation of declaration.	8
§ 47C 2 102. Unit boundaries.	8
§ 47C 2 103. Construction and validity of declaration and bylaws.	9
§ 47C 2 104. Description of units.	9
§ 47C 2 105. Contents of declaration.	10
§ 47C 2 106. Leasehold condominiums.	11
§ 47C 2 107. Allocation of common element, interests, votes, and common expense liabilities.	11
§ 47C 2 108. Limited common elements.	12
§ 47C 2 109. Plats and plans.	13
§ 47C 2 110. Exercise of development rights.	14
§ 47C 2 111. Alterations of units.	15
§ 47C 2 112. Relocation of boundaries between adjoining units.	15
§ 47C 2 113. Subdivision of units.	16
§ 47C 2 114. Easement for encroachments.	16
§ 47C 2 115. Use for sales purposes.	16
§ 47C 2 116. Easement to facilitate exercise of special declarant rights.	17
§ 47C 2 117. Amendment of declaration.	17
§ 47C 2 118. Termination of condominium.	18
§ 47C 2 119. Reserved for future codification purposes.	20
§ 47C 2 120. Master associations.	20
§ 47C 2 121. Merger or consolidation of condominiums.	21
Article 3.	21
Management of the Condominium.	21

§ 47C 3 101. Organization of unit owners' association.	21
§ 47C 3 102. Powers of unit owners' association.	21
§ 47C 3 103. Executive board members and officers.	23
§ 47C 3 104. Transfer of special declarant rights.	24
§ 47C 3 105. Termination of contracts and leases of declarant.	26
§ 47C 3 106. Bylaws.	26
§ 47C 3 107. Upkeep; damages; assessments for damages, fines.	26
§ 47C 3 107.1. Procedures for fines and suspension of condominium privileges or services.	27
§ 47C 3 108. Meetings.	28
§ 47C 3 109. Quorums.	28
§ 47C 3 110. Voting; proxies.	29
§ 47C 3 111. Tort and contract liability.	29
§ 47C 3 112. Conveyance or encumbrance of common elements.	30
§ 47C 3 113. Insurance.	31
§ 47C 3 114. Surplus funds.	33
§ 47C 3 115. Assessments for common expense.	33
§ 47C 3 116. Lien for assessments.	33
§ 47C 3 117. Other liens affecting the condominium.	35
§ 47C 3 118. Association records.	36
§ 47C 3 119. Association as trustee.	36
§ 47C 3 121. American and State flags and political sign displays.	37
Article 4.	38
Protection of Purchasers.	38
§ 47C 4 101. Applicability; waiver.	38
§ 47C 4 102. Liability for public offering statement requirements.	39
§ 47C 4 103. Public offering statement; general provisions.	39
§ 47C 4 104. Same; condominiums subject to developmental rights.	41
§ 47C 4 105. Same; time share.	42
§ 47C 4 106. Conversion buildings.	43
§ 47C 4 107. Same; condominium securities.	43
§ 47C 4 108. Purchaser's right to cancel.	43
§ 47C 4 109. Resales of units.	43
§ 47C 4 110. Escrow of deposits.	43
§ 47C 4 111. Release of liens or encumbrances.	44
§ 47C 4 112. Reserved for future codification purposes.	44
§ 47C 4 113. Express warranties of quality.	44
§ 47C 4 114. Implied warranties of quality.	44
§ 47C 4 115. Exclusion of modification of implied warranties of quality.	45
§ 47C 4 116. Statute of limitations for warranties.	45
§ 47C 4 117. Effect of violations on rights of action; attorney's fees.	45
§ 47C 4 118. Labeling of promotional material.	45
§ 47C 4 119. Declarant's obligation to complete.	45
§ 47C 4 120. Substantial completion of units.	46

Appendix D
NC General Statutes – Chapter 47F
North Carolina Planned Community Act.
(A link to the full text may be found at www.HOA-USA.com)
Click on Resources and then click on HOA Laws
Table of Contents

Article 1.	3
General Provisions.	3
§ 47F 1 101. Short title.	3
§ 47F 1 102. Applicability.	3
§ 47F 1 103. Definitions.	4
§ 47F 1 104. Variation.	6
§ 47F 1 105. Reserved for future codification purposes.	6
§ 47F 1 106. Applicability of local ordinances, regulations, and building codes.	6
§ 47F 1 107. Eminent domain.	6
§ 47F 1 108. Supplemental general principles of law applicable.	7
§ 47F 1 109. Reserved for future codification purposes.	7
Article 2.	7
Creation, Alteration, and Termination of Planned Communities.	7
§ 47F 2 101. Creation of the planned community.	7
§ 47F 2 102. Reserved for future codification purposes.	8
§ 47F 2 103. Construction and validity of declaration and bylaws.	8
§§ 47F 2 104 through 47F 2 116. Reserved for future codification purposes.	8
§ 47F 2 117. Amendment of declaration.	8
§ 47F 2 118. Termination of planned community.	8
§ 47F 2 119. Reserved for future codification purposes.	10
§ 47F 2 120. Master associations.	10
§ 47F 2 121. Merger or consolidation of planned communities.	10
Article 3.	11
Management of Planned Community.	11
§ 47F 3 101. Organization of owners' association.	11
§ 47F 3 102. Powers of owners' association.	11
§ 47F 3 103. Executive board members and officers.	12
§ 47F 3 104. Transfer of special declarant rights.	13
§ 47F 3 105. Termination of contracts and leases of declarant.	13
§ 47F 3 106. Bylaws.	13
§ 47F 3 107. Upkeep of planned community; responsibility and assessments for damages. .	14
§ 47F 3 107.1. Procedures for fines and suspension of planned community privileges or services.	15
§ 47F 3 108. Meetings.	15
§ 47F 3 109. Quorums.	16
§ 47F 3 110. Voting; proxies.	16
§ 47F 3 111. Tort and contract liability.	17
§ 47F 3 112. Conveyance or encumbrance of common elements.	17

§ 47F 3 113. Insurance.....	18
§ 47F 3 114. Surplus funds.	19
§ 47F 3 115. Assessments for common expenses.....	20
§ 47F 3 116. Lien for assessments.	20
§ 47F 3 117. Reserved for future codification purposes.....	22
§ 47F 3 118. Association records.....	22
§ 47F 3 119. Association as trustee.	23
§ 47F 3 120. Declaration limits on attorneys' fees.....	23
§ 47F 3 121. American and State flags and political sign displays.	23

Appendix E
HAPPY HILLS HOMEOWNER ASSOCIATION
Declaration of Covenants, Conditions, and Restrictions
Table of Contents

ARTICLE I. DEFINITIONS	1
ARTICLE II. PROPERTY.....	3
ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.....	4
ARTICLE IV. PROPERTY RIGHTS IN THE COMMON AREA	5
ARTICLE V. COVENANTS FOR ASSESSMENTS	6
ARTICLE VI. USE OF LOTS AND COMMON AREA - PROTECTIVE COVENANTS.....	9
ARTICLE VII. ARCHITECTURAL CONTROL	13
ARTICLE VIII. EXTERIOR MAINTENANCE.....	15
ARTICLE IX. INTERIOR MAINTENANCE	16
ARTICLE X. PARTY WALLS.....	16
ARTICLE XI. EASEMENTS.....	17
ARTICLE XII. GENERAL POWERS AND DUTIES OF THE BOARD OF THE ASSOCIATION	19
ARTICLE XIII. INSURANCE; REPAIR AND RESTORATION	21
ARTICLE XIV. MISCELLANEOUS PROVISIONS.....	22

Appendix F
HAPPY HILLS HOMEOWNER ASSOCIATION
By-Laws
Table of Contents

ARTICLE I.	1
ARTICLE II. DEFINITIONS	3
ARTICLE III. MEETING OF MEMBERS	4
ARTICLE IV. BOARD OF DIRECTORS - SELECTION - TERM OF OFFICE.....	5
ARTICLE V. NOMINATION AND ELECTION OF DIRECTORS	6
ARTICLE VI. MEETING OF DIRECTORS	9
ARTICLE VII. POWERS AND DUTIES OF THE BOARD OF DIRECTORS	13
ARTICLE VIII. OFFICERS AND THEIR DUTIES	15
ARTICLE IX. COMMITTEES	16
ARTICLE X. BOOKS AND RECORDS	16
ARTICLE XI. ASSESSMENTS.....	17
ARTICLE XII. CORPORATE SEAL	19
ARTICLE XIII.AMENDMENTS.....	21
ARTICLE XIV. MISCELLANEOUS	22

Appendix G
LEGISLATIVE UPDATE OF
2013 NC GENERAL ASSEMBLY

Provided By
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- ***Bills That Were 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.

- **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.

- **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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