

## Article 4.

### Protection of Purchasers.

#### **§ 47C-4-101. Applicability; waiver.**

(a) This Article applies to all units subject to this chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of a disposition which is:

- (1) Gratuitous;
- (2) Pursuant to court order;
- (3) By a government or governmental agency;
- (4) By foreclosure or deed in lieu of foreclosure;
- (5) To a person in the business of selling real estate who intends to offer those units to purchasers; or
- (6) Subject to cancellation at any time for any reason by the purchasers without penalty. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

#### **§ 47C-4-102. Liability for public offering statement requirements.**

(a) Except as provided in subsection (b), a declarant must, prior to the offering of any interest in a unit to the public, prepare a public offering statement conforming to the requirements of G.S. 47C-4-103, 47C-4-104, 47C-4-105, and 47C-4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. In the event of any such transfer, the transferor must provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in G.S. 47C-4-108(a). The person who prepared all or a part of or delivered the public offering statement is subject to G.S. 47C-4-117 for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of or deliver a public offering statement, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission. A declarant, who has transferred responsibility for preparation of all or a part of the public offering statement under subsection (b), shall be liable when a false or misleading statement in the public offering statement prepared by another results from the declarant's failure to provide the information required in subsection (b).

(d) If a unit is a part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of G.S. 47C-4-103, 47C-4-104, 47C-4-105, and 47C-4-106 as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-103. Public offering statement; general provisions.**

- (a) A public offering statement must contain or fully and accurately disclose:
- (1) The name and principal address of the declarant and of the condominium;
  - (2) A general description of the condominium, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings and amenities which declarant anticipates including as part of the condominium;
  - (3) The number of units in the condominium;
  - (4) Copies of the recorded or proposed declaration (other than the plats and plans) and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and copies of or a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under G.S. 47C-3-105;
  - (5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:
    - a. A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;
    - b. A statement of any other reserves;
    - c. The projected common expense assessment by category of expenditures for the association; and
    - d. The projected monthly common expense assessment for each type of unit;
  - (6) Any services that the declarant provides or expenses that he pays which are not reflected in the budget and that he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
  - (7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
  - (8) A description of any known or recorded liens, encumbrances or defects affecting the title to the condominium;
  - (9) The terms and limitations of any warranties provided by the declarant;
  - (10) A statement that the purchaser must receive a public offering statement before signing a contract for purchase and that no conveyance can occur until seven calendar days following the signing of a contract for purchase; and that the purchaser has the absolute right to cancel the contract during the seven calendar days period;
  - (11) A statement of any known or recorded unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;

- (12) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account pursuant to G.S. 47C-4-108, together with the name and address of the escrow agent;
- (13) Any restraints on alienation of any portion of the condominium;
- (14) A description of the insurance coverage provided for the benefit of unit owners;
- (15) Any current or known future fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;
- (16) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to G.S. 47C-4-119;
- (17) A brief narrative description of any existing zoning and other land use requirements governing the condominium; and
- (18) A statement that any common element may be alienated or conveyed in accordance with G.S. 47C-3-112.

(b) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section and provide a copy of any such material changes to any purchaser who has executed a contract. If any material change is made in a proposed declaration after a contract for purchase of a unit has been signed but before conveyance, the purchaser may rescind the contract within seven days after receipt of the notice of the change. (1985 (Reg. Sess., 1986), c. 877, s. 1; 1997-456, s. 27.)

**§ 47C-4-104. Same; condominiums subject to developmental rights.**

If the declaration provides that a condominium is subject to any development rights reserved by the declarant, the public offering statement shall disclose, in addition to the information required by G.S. 47C-4-103:

- (1) The maximum number of units, and the maximum number of units per acre, that may be created;
- (2) How many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
- (3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use;
- (4) A brief narrative description of any development rights and of any conditions relating to or limitations upon the exercise of development rights;
- (5) The maximum extent to which each unit's allocated interests may be changed by the exercise of any development right;
- (6) The extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

- (7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right, or a statement that no assurances are made in that regard;
- (8) Any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right, or a statement that no assurances are made in that regard;
- (9) A statement that any limited common elements created pursuant to any development right will be of the same general types and sizes as the limited common elements within other parts of the condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;
- (10) A statement that the proportion of limited common elements to units created pursuant to any development right will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;
- (11) A statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and
- (12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-105. Same; time share.**

(a) If the declaration provides that ownership or occupancy of any units are or may be owned in time shares, the public offering statement shall disclose, in addition to the information required by G.S. 47C-4-103:

- (1) The number and identity of units in which time shares may be created;
- (2) The total number of time shares that may be created;
- (3) The minimum duration of any time shares which may be created; and
- (4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in G.S. 47C-3-116.

(b) The provisions of subsection (a) apply to all purchasers of units in the condominium. In addition, the purchaser of time shares shall receive the information required by G.S. 93A-44. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-106. Conversion buildings.**

Condominiums containing conversion buildings shall be subject to the provisions of Article 2 of Chapter 47A. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-107. Same; condominium securities.**

(a) If an interest in a condominium is registered with the Securities and Exchange Commission of the United States, a declarant satisfies the requirements relating to the

preparation of a public offering statement of this chapter if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission to the extent such statement provides the information required by G.S. 47C-4-103, 47C-4-104, 47C-4-105 and 47C-4-106.

(b) The North Carolina Securities Act, Chapter 78A, shall apply to condominiums deemed to be investment contracts or to other securities offered with or incident to a condominium. In the event of such applicability of the North Carolina Securities Act, any real estate broker or salesman registered under Article 1 of Chapter 93A shall not be subject to the provisions of G.S. 78A-36. The exemption provided by the preceding sentence shall not apply to any person who is required to register with the Securities Exchange Commission as a broker or dealer under the Securities and Exchange Act of 1934. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

#### **§ 47C-4-108. Purchaser's right to cancel.**

(a) A person required to deliver a public offering statement pursuant to G.S. 47C-4-102(c) shall provide a purchaser of a unit or the spouse of such purchaser with a copy of the public offering statement and all amendments thereto before a contract to purchase the unit is executed. No conveyance pursuant to the contract to purchase may occur until seven calendar days following the execution of the contract and a purchaser has the absolute right to cancel the contract at any time during this seven calendar period. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

#### **§ 47C-4-109. Resales of units.**

Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under G.S. 47C-4-101(b), a unit owner shall furnish to a prospective purchaser before conveyance a statement setting forth the monthly common expense assessment and any other fees payable by unit owners. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

#### **§ 47C-4-110. Escrow of deposits.**

(a) Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to G.S. 47C-4-102(c) shall be immediately deposited in a trust or escrow account in a federally insured depository institution lawfully doing business in this State and shall remain in such account for such period of time as a purchaser is entitled to cancel pursuant to G.S. 47C-4-108 or cancellation by the purchaser thereunder whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the seller.

(b) Except as provided in G.S. 47C-4-108, nothing in subsection (a) is intended to preclude the parties to a contract from providing for the use of progress payments by the declarant during construction. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2015-93, s. 1.)

#### **§ 47C-4-111. Release of liens or encumbrances.**

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to G.S. 47C-4-102(c), a seller shall, at or before conveying a unit, record or furnish to

the purchaser, releases of all liens or encumbrances affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien or encumbrance as provided for liens or encumbrances on real estate in G.S. 44A-16(5) and (6) or insurance against the lien or encumbrance acceptable to the purchaser. This subsection does not apply to any real estate which a declarant has the right to withdraw.

(b) Before conveying real estate to the association the declarant shall have that real estate released from: (1) all liens or encumbrances the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens or encumbrances on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens or encumbrances in specified amounts. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-112. Reserved for future codification purposes.**

**§ 47C-4-113. Express warranties of quality.**

The law relating to express warranties is applicable to the sale of a condominium unit and supplements the provisions of this chapter; provided, however, that the existence of express warranties shall not constitute a disclaimer of implied warranties. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-114. Implied warranties of quality.**

The law relating to implied warranties, including but not limited to, implied warranties that the premises are free from defective materials, constructed in a workmanlike manner, constructed according to sound engineering and construction standards and that the premises may be used for a particular purpose, is applicable to the sale of a condominium unit and supplements the provisions of this chapter. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-115. Exclusion of modification of implied warranties of quality.**

(a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

- (1) May be excluded or modified by agreement of the parties; and
- (2) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any person in the business of selling real estate for his own account may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-116. Statute of limitations for warranties.**

(a) A judicial proceeding for breach of any obligation arising under G.S. 47C-4-113 or 47C-4-114 must be commenced within the applicable period of limitations set out in Chapter 1 of the North Carolina General Statutes.

(b) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-117. Effect of violations on rights of action; attorney's fees.**

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief. The court may award reasonable attorney's fees to the prevailing party. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-118. Labeling of promotional material.**

If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT". (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-119. Declarant's obligation to complete.**

(a) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to G.S. 47C-2-109.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by G.S. 47C-2-110, 47C-2-111, 47C-2-112, 47C-2-113, 47C-2-115, and 47C-2-116. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-4-120. Substantial completion of units.**

In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an architect licensed under the provisions of Chapter 83 [83A] of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes, or by issuance of a certificate of occupancy authorized by law. (1985 (Reg. Sess., 1986), c. 877, s. 1.)