

§ 47C-3-103. Executive board members and officers.

(a) Except as provided in the declaration, the bylaws, or subsection (b) or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the unit owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

(b) The executive board may not act on behalf of the association to amend the declaration (G.S. 47C-2-117), to terminate the condominium (G.S. 47C-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47C-3-103(e) and (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. 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.

(c) 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.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 120 days after conveyance of seventy-five percent (75%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than 60 days after conveyance of twenty-five percent (25%) of the units (including units which may be created pursuant to special rights) to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of fifty percent (50%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by unit owners other than the declarant.

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, ss. 12, 13.)