

Recap of stakeholder meeting on September 23, 2019

We had a productive exchange of information and ideas at our stakeholder meeting at the Secretary of State's administrative office on the morning of September 23. Participant list is at the end of this recap.

Plats and plans: Tom Morgan (NC Land Records Advisory Committee), Rich Elkins (NC Secretary of State Land Records Manager), and Mike Bass (NC Society of Surveyors) provided suggestions on improving the requirements under Chapter 47C for legal description of units. Following explanation by Steve Brown (Investors Title) of his thoughts in drafting HB 920, there appeared to be consensus on the following points:

- The present requirement in GS 47C-2-109(b)(6) that an architect certify the plat or plans of a condominium "as built" is unworkable.
- HB 920's revision of 2-109(b)(6) is acceptable, but should be accompanied by acknowledgment that the actual physical boundaries should serve as monuments for surveying purposes, so that the actual physical boundaries describe a legal condominium even if such actual boundaries deviate from the recorded plans. This principle would apply both to the location of a condo building on the ground, as well as to locations of floors, ceilings, and other vertical aspects of units. (The Model Act contains language in section 2-114 that may serve as a model for recognizing actual locations as monuments.)
- GS 47C-2-109(b)(6a) should clarify the role of the surveyor in platting those physical aspects not assigned to the architect under subsection (b)(6). The surveyor would be required to certify that the surveyor's plat meets the surveyor's "Board Rules" set out under NC Administrative Code Title 21, Chapter 56.
- The physical aspects of plat or plans should comply with the physical requirements of the plat recording statute, GS 47-30. This provision supersedes the existing 47C-2-109(e), but does not otherwise subject condo plans or plat to the provisions of GS 47-30.

Amendment and reformation: There was consensus that the amendment to Chapter 47C should include special reformation rules that take into account:

- Common-law reformation is subject to a statute of limitations, but often problems with condo formation don't come to light until many years after the first generations of owners.
- There is rarely a sound reason for any owner or mortgagee to oppose amendment of formation documents that cure defects, and typically the challenges to obtaining necessary approvals (or in case of litigation, personal service) arise out of logistics and availability, although the holdout phenomenon also should not thwart legitimate efforts to fix defects.

Some concern was expressed about the specifics of the reformation process set out in HB 920, in particular about vesting of initial jurisdiction in the Clerk of Superior Court, after the owners' association has exhausted efforts to obtain unit-owner approval for a corrective amendment of the declaration. There appeared to be consensus that a dispute about a proposed amendment should go to a Superior Court judge. Steve Brown will review the amendment and reformation provisions of HB 920 in light of these concerns, and also in light of possible technical amendments to association procedure (see next section).

Management of condominium

Jim Slaughter, attorney for many community associations, brought up a number of technical inconsistencies between the association provisions of the Condominium Act and those of the later-enacted Planned Community Act, GS Chapter 47F. Attorneys Henry Jones and Matt Waters concurred that it would be beneficial to bring Article 3 of the Condominium Act into concordance with Article 3 of the PCA. (These attorneys also represent various community association interest groups.) Example: GS 47F-3-109 allows a PCA homeowner association to attempt to overcome a lack of quorum at a meeting by adjourning and reducing the quorum requirement by 50% for the next meeting, and so on until a quorum is present. Chapter 47C does not contain a comparable provision.

It was also noted that in some cases, and for various reasons, condo POAs wind up applying allocations – particularly for common expense liabilities – that may vary from the actual ultimate percentage allocations provided by the declaration. Consideration could be given to addressing the practicalities of this phenomenon by, for example, limiting the period in which a unit owner could demand an accounting or adjustment of charges based on alleged mis-allocation.

Curative statute and marketable title

Attorney Jim Pendergrass, who has handled several repairs of defective condo documents, suggested adding a curative provision for regimes that, by their terms, were intended to be condominiums but were defective in some way, and had been created before a date to be set out in the statute. Such cures would apply to Chapter 47A Unit Ownership regimes as well as to Chapter 47C condominiums. He proposed that such a curative statute would declare such intended condominiums marketable.

Air rights and land condominiums

The meeting concluded with consideration of adding provisions to HB 920 that would specifically authorize land condominiums and air-rights condominiums. Steve Brown pointed out that a conveyance of air rights does not need to be limited to a condominium regime, so he would like to look at adding a provision more generally authorizing conveyances of air rights, whether or not as part of a condominium. There was consensus that developments selling slices and shafts of air, not limited to the “box” of a traditional condominium unit within a building, is well advanced in North Carolina, and that it would be appropriate to recognize them statutorily.

Action plan

- Matt Waters will review Jim Slaughter’s suggestions for conforming the management/association provisions of Chapter 47C to the analogous provisions of Chapter 47F, and provide those to Steve Brown.
- Steve Brown will:
 - Review and revise the reformation provisions of HB 920;
 - Add Tom Morgan’s proposed revision of GS 47C-2-109(b)(6a);
 - Consider adding a form of Jim Pendergrass’s proposed curative statute;
 - Consider adding new provisions for recognition of land condominiums and conveyances of air rights (condominium and non-condominium).

We (Brian Byrd and Jim Saintsing) plan to follow up with Matt Waters and Steve Brown by end of October 2019 to check on progress on the action items. We will also continue to seek new input from stakeholders we haven’t heard from yet, and further review and consensus from stakeholders we have heard from.

Attendees at September 23, 2019 meeting:

Name:	Affiliation(s):
Jim Saintsing	NC Land Title Association; Fidelity National Title Group
Brian Byrd	NC Bar Association Real Property Section and Community Associations Committee; Fox Rothschild
Michael Barr	NC Society of Surveyors; Bissell Group
Tom Morgan	Land Records Advisory Committee; surveyor
Christy Davis	NC Society of Surveyors
David Miller	Longleaf Law Partners
Matt Waters	NC Bar Association Community Associations Committee; Jordan Price
Henry Jones	Community Associations Institute; Jordan Price
Charles Meier	Marshall, Williams and Gorham
Rich Elkins	NC Secretary of State Land Records Manager
Steve Brown	Investors Title
Nancy Ferguson (telephone)	NC Bar Association Real Property Association; Fidelity National Title Group
Robin Etheridge (telephone)	NC Property Mappers Association; Dare County Tax Department
Jim Slaughter (telephone)	NC Community Association; Black Slaughter Black