

# Condominiums & Boat Slips

## I. Condominiums

- A. NCGS 47A – Unit Ownership Act
- B. Compare and Contrast NCGS 47C – NC Condominium Act
- C. What is a Condominium?

### § 47A-2. Declaration creating unit ownership; recordation.

Unit ownership may be created by an owner or the co-owners of a building by an express declaration of their intention to submit such property to the provisions of the Article, which declaration shall be recorded in the office of the register of deeds of the county in which the property is situated.

### § 47A-13. Declaration creating unit ownership; contents; recordation.

The declaration creating and establishing unit ownership as provided in G.S. 47A-3 of this Article, shall be recorded in the office of the county register of deeds and shall contain the following particulars:

- (1) Description of the land on which the building and improvements are or are to be located.
- (2) Description of the building, stating the number of stories and basements, the number of units, and the principal materials of which it is constructed.
- (3) The unit designation of each unit, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification.
- (4) Description of the general common areas and facilities and the proportionate interest of each unit owner therein.
- (5) Description of the limited common areas and facilities, if any, stating what units shall share the same and in what proportion.
- (6) Statement of the purpose for which the building and each of the units are intended and restricted as to use.
- (7) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or the place of business of such person which shall be within the city and county in which the building is located.

(8) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this Article.

(9) The method by which the declaration may be amended, consistent with the provisions of this Article.

**§ 47C-2-105. Contents of declaration.**

(a) The declaration for a condominium must contain:

(1) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium", and the name of the association;

(2) The name of every county in which any part of the condominium is situated;

(3) A legally sufficient description of the real estate included in the condominium;

(4) A statement of the maximum number of units which the declarant reserves the right to create;

(5) A description (by reference to the plats or plans described in G.S. 47C-2-109) of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) A description of any limited common elements, other than those specified in subsections 47C-2-102(2) and (4), as provided in G.S. 47C-2-109(b)(7);

(7) A description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in subsections 47C-2-102(2) and (4), together with a statement that they may be so allocated;

(8) A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect, together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) Any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;

- (11) An allocation to each unit of the allocated interests in the manner described in G.S. 47C-2-107;
  - (12) Any restrictions on use, occupancy, or alienation of the units;
  - (13) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and
  - (14) All matters required by G.S. 47C-2-106, 47C-2-107, 47C-2-108, 47C-2-109, 47C-2-115, 47C-2-116, and 47C-3-103(d).
- (b) The declaration may contain any other matters the declarant deems appropriate.

**§ 47A-15. Plans of building to be attached to declaration; recordation; certificate of architect or engineer.**

(a) There shall be attached to the declaration, at the time it is filed for record, a full and exact copy of the plans of the building, which copy of plans shall be entered of record along with the declaration. Said plans shall show graphically all particulars of the building, including, but not limited to, the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, stating the name of the building or that it has no name, area and location of the common areas and facilities affording access to each unit, and such plans shall bear the verified statement of a registered architect or licensed professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. If such plans do not include a verified statement by such architect or engineer that such plans fully and accurately depict the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, as built, there shall be recorded prior to the first conveyance of any unit an amendment to the declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully depict the layout, ceiling and floor elevations, unit numbers and dimensions of the units as built. Such plans shall be kept by the register of deeds in a separate file, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "Unit Ownership," with the name of the building, if any, and each containing a reference to the book and page numbers and date of the recording of the declaration.

(b) In order to be recorded, plans filed for recording pursuant to subsection (a) shall:

- (1) Be reproducible plans on cloth, linen, film or other permanent material and be submitted in that form; and
- (2) Have an outside marginal size of not more than 21 inches by 30 inches nor less than eight and one-half inches by 11 inches, including one and one-half inches for binding on the left margin and a one-half inch border on each of the other sides. Where size of the buildings, or

suitable scale to assure legibility require, plans may be placed on two or more sheets with appropriate match lines.

(c) The fee for recording each plan sheet submitted pursuant to subsection (a) shall be as prescribed by G.S. 161-10(a)(3).

#### **D. Common Elements and Limited Common Elements**

##### **§ 47A-3. Definitions.**

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(7) "Limited common areas and facilities" means and includes those common areas and facilities which are agreed upon by all the unit owners to be reserved for the use of a certain number of units to the exclusion of the other units, such as special corridors, stairways and elevators, sanitary services common to the units of a particular floor, and the like.

##### **§ 47A-6. Undivided interests in common areas and facilities; ratio fixed in declaration; conveyance with unit.**

(a) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the ratio expressed in the declaration. Such ratio shall be in the approximate relation that the fair market value of the unit at the date of the declaration bears to the then aggregate fair market value of all the units having an interest in said common areas and facilities.

(b) The ratio of the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered except with the unanimous consent of all unit owners expressed in an amended declaration duly recorded.

(c) The undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

##### **§ 47C-2-107. Allocation of common element, interests, votes, and common expense liabilities.**

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent (100%) if stated as percentages. If the declaration allocates to each of the units a fraction or percentage of ownership of the common elements that results in an actual total of such fractions or percentages that is greater or less than the actual whole of such ownership, each unit's ownership of the common elements shall be automatically reallocated so that each unit is allocated the same fraction or percentage of ownership of the actual whole as that unit had of the actual total that was greater or less than the actual whole. The declarant or the association shall file an amendment to the declaration reflecting such reallocation which amendment need not be executed by any other party.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

### **Example #1 – Royal Court Condominium**

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: The lower of (i) the horizontal plane of the bottom surface of the concrete slab of the floor above, (ii) or the bottom of the dropped drywall ceiling within any portion of a Unit. The ceilings in certain portions of the Units will not be a single horizontal plane, but shall vary with the differing finished ceiling elevations within such portions of the Units.

(b) Lower Boundary: The horizontal plane of the top surface of the sub flooring within each Unit.

(c) Vertical Boundaries: The vertical boundaries of the Units are as follows: (i) the center of any demising wall forming a boundary between Units, (ii) the outside painted face of the Common Element side of any exterior wall separating a Unit from Common Elements of the Building; and (iii) the outside face of the glazing or sheeting of any exterior wall of the Building forming the boundaries of the Units; all as extended to intersections with each other, and with upper and lower unit boundaries.

Section 5.1 Common Elements: The Common Elements of the Condominium shall include the following:

(e) The individual parking spaces that are shown on the Plans and labeled Limited Common Element. The parking spaces that are numbered on the Plans have been allocated to

the respective Unit corresponding to such number. All other individual parking spaces shown on the Plans and labeled Limited Common Elements shall be allocated to the Units by the Declarant so long as Declarant continues to own Units in the Building, and thereafter, in the discretion of, and pursuant to rules, regulations to be established by, the Association. The parking spaces that are specifically allocated to a Unit shall be considered Limited Common Element for the sole use and enjoyment of the Owners of such Unit. Parking spaces shall not be considered separate property and the use and enjoyment of an allocated parking space cannot be transferred separate and apart from the Unit to which such parking spaces has been allocated.

(f) The individual storage units shown on the Plans and labeled Limited Common Element. The individual storage units numbered on the Plans have been allocated to the respective Unit corresponding to such number. All other individual storage units shown on the Plans and labeled Limited Common Element shall be allocated to the Units by the Declarant so long as Declarant continues to own Units in the Building, and thereafter, in the discretion of, and pursuant to rules and regulation to be established by, the Association. The storage units that are specifically allocated to a Unit shall be considered Limited Common Element for the sole use and enjoyment of the Owner of such Unit. Storage units shall not be considered separate property and the use and enjoyment of an allocated storage unit cannot be transferred separate and apart from the Unit to which such storage unit has been allocated.

## **Example #2 Heatherstone Condominium**

1.11 Garage Unit. A separate and numbered Unit now or hereafter constructed and designated and/or delineated as Garage Unit on the Plans.

3.3 Use of Garage Units. Each Garage Unit is hereby restricted to use by the Unit Owner or Owners thereof as a storage facility for automotive vehicles and watercraft subject to the provisions herein contained. The Garage Unit must be kept closed at all times, except when entering or exiting the Garage Unit. No living facilities may be established within a Garage Unit. No Garage Unit Owner shall cause or permit the presence, use, disposal, storage, or release of any hazardous substances within a Garage Unit. No animals or pets are allowed in a Garage Unit. Grills may not be stored within a Garage Unit. A Garage Unit may not be owned by any person other than Declarant or an Owner of a Unit. A Garage Unit may be sold separately, but only to another Unit Owner. Notwithstanding the above, if the Unit Owner of a Garage Unit conveys the Unit separately without having previously conveyed the Garage Unit to another Unit Owner, title to the Garage Unit shall be deemed to be conveyed with the Unit.

## **E. Descriptions of Units**

### **§ 47C-2-104. Description of units.**

A description of a condominium unit which sets forth the name of the condominium, the recording data for the declaration, and the identifying number of the unit or which otherwise complies with the general requirements of the laws of this State concerning description of real property is sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

## II. Boat Slips

- a. Generally uninsurable interests
- b. Leasehold Interests
  - (i) Sub-Assignments of a Master Lease between Duke Power and an Association
  - (ii) Specifically made appurtenant to the Lake Lots
  - (iii) Capable of being freely alienated?
- c. Permits: To suffer, allow, consent, let; to give leave or license; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act.
- d. License: A personal privilege to do some particular act or series of acts on land without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not assignable. A license is not a contract between the parties, but is a personal mere permit.