

2013-2014 SESSION LAWS

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Business Entity Legislation

[SL 2013-116 \(H473\)](#): An Act to Enact the North Carolina Captive Insurance Act

[SL 2013-153 \(S239\)](#): An Act to Make Various Revisions to the North Carolina Business Corporation Act

[SL 2013-157 \(S439\)](#): An Act to Amend and Restate the North Carolina Limited Liability Company Act and to Make other Conforming changes.

Home Owners' Association Legislation

The Secretary of State's Office has no authority over the enforcement of Home Owners' Association activities. The below new legislation information is being provided because the Department often receives questions regarding home owners' associations.

[SL 2013-34 \(S228\)](#): An Act Providing that a Unit Owner in a Condominium and a Lot Owner in a Planned Community shall afford access through the Limited Common Element assigned or allocated to the Owner's Unit or Lot Owners for the purpose of Conducting Maintenance, Repair, or Replacement Activities and Providing that a Unit or Lot Owner is Legally Responsible for Damage to a Limited Common Element Caused by the Unit or Lot Owner and Clarifying Community and Amending the Procedures Regarding Amendment of a Recorded Declaration.

[SL 2013-127 \(H278\)](#): An Act to Encourage Parties to a Dispute Involving Certain Matters Related to Real Estate Under the jurisdiction of a Homeowners Association to Initiate Mediation to try to Resolve the Dispute Prior to Filing a Civil Action

[SL 2013-202 \(H331\)](#): An Act to Stabilize Titles and to Provide a Uniform Procedure to Enforce Claims of Lien Securing Sums Due Condominium and Planned Community Associations.

Summaries

Click on Act Names below to view the enacted legislation

Business Entity Legislation

- Bill H 473 (SL 2013-116) (2013-2014)

[AN ACT TO ENACT THE NORTH CAROLINA CAPTIVE INSURANCE ACT.](#)

Effective date: *Unknown*

Enacted June 19, 2013. Effective July 1, 2013, if funds are appropriated for the 2013-15 fiscal biennium to provide the Department of Insurance with regulatory staff and resources to license and regulate captive insurance companies. If no funds are appropriated, then the act is not effective until July 1 of a year the General Assembly appropriates funds to implement it.

- Bill S 239 (SL 2013-153) (2013-2014)

[AN ACT TO MAKE VARIOUS REVISIONS TO THE NORTH CAROLINA BUSINESS CORPORATION ACT.](#)

Effective date: *January 1, 2014*

Revisions were made to North Carolina Business Corporation Act regarding: meeting by remote communication; provision of a shareholder list; and various voting requirements and/or board of director authority in regard to amendments, plans of merger, and disposition of assets and dissolution.

- Bill S 439 (SL 2013-157) (2013-2014)

[AN ACT TO AMEND AND RESTATE THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT AND TO MAKE OTHER CONFORMING CHANGES.](#)

Effective date: *January 1, 2014* , except as otherwise provided.

Repeals GS Chapter 57C, the "NC Limited Liability Company Act" and enacts a new GS Chapter 57D, also to be known as the "North Carolina Limited Liability Company Act" (Act) to amend, restate, and make conforming changes to the Act as the title indicates.

Provides that new Chapter 57D and any other applicable state laws govern the internal affairs of every Limited Liability Company (LLC) and any liability that interest owners, managers, or other company officials may have for the liabilities of the LLC. Declares that North Carolina's superior courts have jurisdiction to enforce the provisions of this Chapter. Reserves the power to amend or repeal all or any part of this Chapter at any time to the General Assembly. Provides that the scope of any amendments to this Chapter applies to all LLCs, foreign LLCs, interest owners, managers, and other company officials and includes LLCs and foreign LLCs in existence, or persons having such interests and status, at the time any amendments are enacted. Makes each provision of this Chapter severable, so that if any provision or

application of this Chapter is held to be invalid, its invalidity will not affect other provisions or applications of the Chapter that can be given effect without the invalid provision or application.

Specifies requirements for the filing of documents under this Chapter. Requires that a document filed by the Secretary of State of North Carolina (Secretary) must be filed as provided in GS Chapter 55D. Identifies persons who are authorized to file documents on behalf of an LLC under specified circumstances.

Authorizes the Secretary to make the use of certain application forms mandatory and provides that the Secretary may promulgate and furnish other forms for documents required or permitted to be filed under this Chapter, but their use is not mandatory.

Delineates fees to be collected by the Secretary (1) for filing documents with the Secretary, (2) for service of process on the Secretary (if the serving party prevails then the party may recover the process fee), and (3) for copying and certifying a copy of any filed document related to an LLC.

Provides that any person adversely affected by the failure or refusal of any person to execute and deliver any document to the Secretary that is required to be filed under this Chapter may petition the superior court with appropriate jurisdiction as specified in this Chapter to direct the filing and execution of the document. If the court finds that it is proper for the document to be executed and delivered to the Secretary and the applicable company official has refused or failed to do so, then the court must order the Secretary to make the filing.

Home Owners' Associations

- Bill S 228 (SL 2013-34) (2013-2014)

AN ACT PROVIDING THAT A UNIT OWNER IN A CONDOMINIUM AND A LOT OWNER IN A PLANNED COMMUNITY SHALL AFFORD ACCESS THROUGH THE LIMITED COMMON ELEMENT ASSIGNED OR ALLOCATED TO THE OWNER'S UNIT OR LOT OWNERS FOR THE PURPOSE OF CONDUCTING MAINTENANCE, REPAIR, OR REPLACEMENT ACTIVITIES AND PROVIDING THAT A UNIT OR LOT OWNER IS LEGALLY RESPONSIBLE FOR DAMAGE TO A LIMITED COMMON ELEMENT CAUSED BY THE UNIT OR LOT OWNER AND CLARIFYING COMMUNITY AND AMENDING THE PROCEDURES REGARDING AMENDMENT OF A RECORDED DECLARATION.

Effective date: April 24, 2013; except for Section 5 which become effective October 1, 2013.

Rewrites GS 47C-3-07 and GS 47F-3-107 regarding assessments for damages the responsibility of a limited common element assigned to a unit or lot owner.

Rewrites GS 47F-1-104 and GS 47F-2-103, to provide clarifying language that the declaration, bylaws, and articles of incorporation form the legal authority for the planned community to act as provided in their declaration, bylaws, and articles of incorporation and are enforceable by their terms.

Rewrites GS 47F-2-117, providing that any declaration amendment passed pursuant to the provisions of this section is presumed valid and enforceable. Effective October 1, 2013, applying to any amendment of a planned community declaration recorded on or after that date.

Rewrites GS 47F-1-102, adding references to GS 47F-1-104, GS 47F-2-103, and GS 47F-2-117 to its applicability section.

- Bill H 278 (SL 2013-127) (2013-2014)

[AN ACT ENCOURAGING PARTIES TO A DISPUTE INVOLVING CERTAIN MATTERS RELATED TO REAL ESTATE UNDER THE JURISDICTION OF A HOMEOWNERS ASSOCIATION TO INITIATE MEDIATION TO TRY TO RESOLVE THE DISPUTE PRIOR TO FILING A CIVIL ACTION.](#)

Effective date: *July 1, 2013*

Establishes voluntary pre-litigation mediation prior to filing a civil action and applies to disputes arising under Chapter 47C of the General Statutes (North Carolina Condominium Act), Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an association's declaration, bylaws, or rules and regulations. Disputes related solely to a member's failure to timely pay an association assessment or any fines or fees associated with the levying or collection of an association assessment are not disputes which may be mediated.

The statute provides definitions and the mediation process.

- Bill H 331 (SL 2013-202)(2013-2014)

[AN ACT TO STABILIZE TITLES AND TO PROVIDE A UNIFORM PROCEDURE TO ENFORCE CLAIMS OF LIEN SECURING SUMS DUE CONDOMINIUM AND PLANNED COMMUNITY ASSOCIATIONS.](#)

Effective date: *October 1, 2013*

Rewrites portions of GS 47C and GS47F regarding the following Section Titles:

1. Liens for sums due the association; enforcement; and
2. Validation of certain nonjudicial foreclosure proceedings and sales.