



# ASSOCIATION HERALD

## THE PLANNED COMMUNITY ACT

**A**dopted January 1, 1999, the North Carolina Planned Community Act (N.C.G.S §47-F) has dramatically shaped the way community associations are governed for the past decade. Originally recommended by the NC Bar Association, the Act was an attempt by the General Assembly to bring older communities onto a more equal footing with their modern day counterparts. Older restrictive covenants lacked adequate provisions for assessments, enforcements and had little to no corporate structure, which made effective governance difficult. Derived from the Uniform Planned Community Act (from the Commissioners on Uniform State Laws), the NC Act sought to bring equity to NC planned communities and their residents.

During the past 10 years the Act withstood several legal challenges which ultimately resulted in amendments to the Act and also served to strengthen the Act's fundamental premises, particularly as the Act relates to 'powers of the association', while also



reaffirming the legislature's intent to protect the rights of association residents. Herewith is a brief outline of the Act as it affects most associations:

The Act applies in its entirety to all planned communities created within NC on or after 1/1/1999, and certain sections of the Act also apply to all planned communities created before 1/1/1999. For the purpose of this article, our focus will be on these sections that apply to all communities. To determine the applicability to your community, check the date on the Articles of Incorporation.

### §47-F-3-102 POWERS OF THE ASSOCIATION

"Unless the articles of incorporation or the declaration expressly provides to the contrary" the association may:

- (1)-(6) make rules, budgets, collect assessments for common expenses, hire contractors, enter into litigation, incur liabilities and regulate the use and maintenance of common elements.
- (11) Impose late fees "not to exceed the greater of" \$20 per month or 10 percent of the unpaid amount." E.g. if the assessment is \$120 per year payable on January 1, the association

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# THE PLANNED COMMUNITY ACT, CONT.

can charge \$20 for each month (after a 30 day grace period) that the assessment is unpaid. The association can also “suspend privileges or services provided by the association” after notice and an opportunity to be heard. Many older association documents specify that a low interest rate may be charged on unpaid assessments, and this section permits them to collect both interest and a late fee. Collecting only a late fee allows the penalty to carry more weight and simplifies accounting procedures. Keep in mind that the intent of late fees is never to be a profit center, but simply to provide the association with leverage to ensure collection of assessments for common expenses.

(12) “Impose reasonable fines or suspend privileges or services provided by the association” for violations of the declaration, bylaws or rules. The prerequisite for fines and suspension of privileges is that the resident must be provided with proper notice and an opportunity to be heard.

Section 107.1 outlines procedures for fining and suspension which applies “unless a specific procedure” is provided for in the declaration. The hearing must be held before the executive Board or an adjudicatory panel appointed by the Board (no officers or Board members on the panel). Proper notice of the charge must be given (written, usually at least 10 days in advance of the hearing date) and the homeowner must be permitted to speak and present evidence at the hearing. The Board or panel may decide to suspend services or planned community privileges, or they may impose a fine not to exceed \$100 per day. The suspension or fines may continue without further hearing until the violation is cured, but fines may not begin until 5 days after the hearing, and the resident must receive notice of the decision. The resident may appeal



to the Board if the decision was made by an adjudicatory panel, and fines may be secured by liens.

(13) Impose reasonable charges connected with document preparation, including account balance statements.

(14) obtain directors and officers liability insurance.

(15) assign rights to future income (necessary to negotiate repayment of a loan)

(16), (17) exercise powers exercised by similar legal entities in NC and any other powers “necessary and proper” for the governance and operation of the association.

47F-3-103 (f) The association is required to “publish the names and addresses of all officers and Board members” within 30 days of election. Election of officers may occur later than the Board election, and ‘publishing’ is understood to include posting the information on a website for residents, and not necessarily requiring that a special mailing be done.

## **47F-3-107 UPKEEP OF PLANNED COMMUNITY; RESPONSIBILITY AND ASSESSMENT OF DAMAGES.**

This section specifies the association’s responsibility for maintenance, repair

and replacement of common elements. Damage to common elements caused by homeowners may be assessed to them if caused by “negligence or misconduct of any lot owner or occupant (3-115-e)”. Losses to a lot owner as a result of the association’s agent’s actions must be reimbursed to the owner.

47F-3-115 specifies that assessments can be collected, at least annually, for common area upkeep. The Declarant is responsible for paying all common area expenses until a common expense assessment is levied. Expenses associated with limited common elements are to be funded by residents who make use of the common element in equal proportion “to the extent required by the declaration”.

To be continued in the next issue of the Association Herald.



# VIEWS FROM ASSOCIA

## CAUSE FOR APPLAUSE

*Board Members Dig In to Meet the Challenges of Today*

CAROLYN CUMMINS, PCAM, CMCA, SENIOR VICE PRESIDENT, ASSOCIA

**W**ith delinquencies on the rise, foreclosures looming, vendors needing to be paid, owners wanting areas maintained and pools open, it can seem like a laborious task to be a Board member these days. So why do it? It might be the need to give back or a selfish need to make a change in the community. It could even be something as simple as a desire to help and improve the lives of your neighbors as well as your own.

Whatever the reason may be, Board members should be commended for their tireless efforts. Board members, and for that matter committee members, serve as volunteers; non paid workers who devote personal time to helping maintain common areas and ensuring the governing rules and regulations are adhered to. Along with this can come some unpleasant interactions with

unhappy owners, vendors or others who often find themselves in difficult situations and unable to meet their association obligations.

Today, though perhaps more challenging, is no different than any other day for a Board member of a homeowners association. Some situations may have been forced into the forefront like foreclosure and spiking delinquencies but the goals of the association and the Board of Directors are the same: maintain and improve property values in the community. Board members' fiduciary responsibilities obligate them to act in good faith and in the best interest of the owners/members while still exercising good judgment and acting within the legal guidelines of the association. Sometimes these responsibilities can be at odds with each other and create a challenging situation for Board members. It is these tough decision making

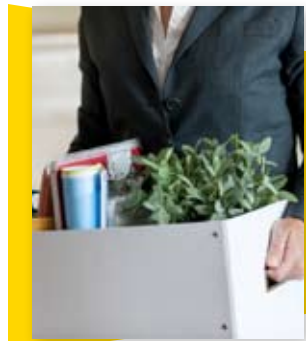
times that Board members do not like; it is not fun or easy to be the enforcer, in good or bad times.

Associa and HRW understand the challenges Board members face and sincerely appreciate all the hard work, selfless time and energy dedicated to maintaining the integrity of the association. Thank you to all Board members, committee members and other association volunteers for lending a hand in improving the community.



## HOW TO SURVIVE A JOB LOSS

ARTICLE PROVIDED BY CAI AT [WWW.CAIONLINE.ORG](http://WWW.CAIONLINE.ORG)



It's never a good time to lose your job. However, the current economic environment has resulted in business closures, downsizing and layoffs for many in our community. The National Foundation for Credit Counseling offers the following tips for surviving a layoff:

- Allow yourself to be upset or even afraid. These are natural reactions.

However, if they become intense, seek professional help. Talking things through and hearing another person's perspective can bring relief and restore your positive outlook.

- Resist the urge to tell your boss what you truly think of him or her. Remember, you may need him or her as a reference for a future job.
- Take advantage of any assistance your workplace offers. Many companies provide placement assistance, job retraining and severance packages. Make sure you are aware of all benefits offered.

- Apply for any applicable government benefits. Your HR representative at work will be a good resource.
- Resist the urge to solve your problems by spending recklessly. It may feel good for the moment, but the high of spending won't equal the low of dealing with additional debt when there is no income.
- Don't be tempted to live off of your credit cards. Someone with a good line of credit could actually support the family at the current standard of living by using credit, but there's no guarantee a new position will materialize any time soon. Expect one month of job search for each \$10,000 of annual income you hope to replace. In other words, if you seek a \$50,000 salary, it may take you five months to land that job.
- Take a personal inventory. Consider all assets, income and expenses. No one wants to liquidate assets to survive, but it is good to know what you have to fall back on.

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# HOW TO SURVIVE A JOB LOSS, CONT.

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- Drastic times call for drastic measures. Nothing is off-limits. Consider selling the second car or recreational vehicle, real estate holdings, rental properties or jewelry.
- After you review your income versus debt obligations, if you don't have enough money to make ends meet, calculate how much you'll need for basic household expenses. Your goal is to pay everyone, but if you must make a choice, keep food on the table and your home life stable by paying your rent or mortgage, association assessments, utilities, childcare, insurance premiums and health care.
- Have a family meeting that includes the children. You don't want family members pulling in different directions, and a joint effort yields a better result.
- Make cutbacks wherever possible, knowing that your austere lifestyle will only be temporary. Resolve to stop all non-essential spending immediately.
- Tracking your spending is always a good idea, but when money is tight, it's essential. Write down every cent you spend. After 30 days, review where the money went and decide where to cut back. You'll be amazed how much you can save without feeling the pinch.
- Contact your creditors to arrange lower payments. Most major credit card issuers have help programs. Explain your situation and what you're doing to resolve it. The creditor may be able to temporarily lower your monthly payment and reduce interest.
- Inform your mortgage lender of your situation. Be prepared to provide documentation of your setback, and have a resolution plan in mind. Since the average consumer doesn't know all the loan modifications available, sit down with a certified housing counselor and map out a plan best suited to your situation.

The National Foundation for Credit Counseling is a national nonprofit credit counseling organization. For more information, visit [www.DebtAdvice.org](http://www.DebtAdvice.org) or call (800) 388-2227. En Español, dial (800) 682-9832.



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