

N.C. General Assembly Session Bills “Cross Over”

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The 2019 Session of North Carolina General Assembly has now gone beyond its so-called “Crossover” deadline on Thursday, May 9, 2019. Crossover is the day by which time most substantive legislation must pass from one Chamber to the other in order to receive consideration in the receiving chamber.

Looking forward, many bills that survived crossover can expect to receive much more scrutiny in the second chamber now that the critical deadline has passed. During the two weeks before the deadline, most bills other than those affecting public education, budget or political issues, received very little scrutiny, as legislators allowed bills to move forward to survive the crossover deadline. Bills that have just recently passed will face examination by a new set of legislators.

The following is a list of bills that have drawn attention by CAI and could affect Planned Communities and Condominiums:

House Bill 594, HOAs – Leased Properties: Survived crossover; the bill passed the House May 6, 2019 with a vote of 117 – 0; The bill was received by the Senate and referred to the Committee on Rules and Operations of the Senate; it remains eligible for consideration.

This bill has been significantly amended to provide that an amendment to any declaration of covenants or bylaws prohibiting the lease of a lot within a planned community for a term greater than 30 days will not be effective in planned communities created after October 1, 2019 if the declaration in the planned community has no restrictions or limitations on leasing. The bill would not affect Associations created prior to October 1, 2019. If passed, this act would become effective October 1, 2019.

House Bill 750, Clarify Deed Restrictions/Solar Collectors: Did not survive crossover deadline; this bill was still in the House Committee on Energy and Public Utilities as of the deadline; The bill is no longer eligible for consideration this session.

This bill seeks to amend the laws which allow limitations on the placement of solar panels by providing that such limitations are allowed so long as they do not “have the effect of reducing the operating efficiency” of the solar panels. Per this bill, “operating efficiency” means a regulation of location or screening which would decrease the efficiency or performance of the solar collector by more than 10% of the amount that was originally specified for that solar collector. Further, the bill strikes subsection (d) of this section. This subsection allowed limitations that would prohibit the location of solar collectors that are visible by a person on the ground in several locations of the structure including the façade that faces open areas, roof surfaces that slope down toward common areas, and areas of common access faced by the structure.

House Bill 806, HOA/Condo Crime & Fidelity Insurance: Survived crossover; The bill passed the House on April 30, 2019 with a vote of 114 – 0; The bill was received by the Senate and

referred to the Committee on Rules and Operations of the Senate; The bill remains eligible for consideration.

This bill is the same as one drafted and sponsored by CAI in 2017. This bill seeks to require condominium and homeowners' associations and their management companies to obtain a crime and fidelity insurance policy and require the associations' executive boards to perform annual independent financial audits. Sections 1 and 5 of the bill make conforming changes. Sections 2 and 6 require associations with annual assessments for common expenses of at least \$25,000 OR with \$25,000 or more of total funds invested/on deposit obtain and maintain the insurance policy. Sections 3 and 7 remove the elective audit from association recordkeeping procedures. Sections 4 and 8 require the executive boards of associations with total account balances of at least \$150,000 to provide an annual independent financial audit conducted by a CPA.

If passed, this act would become effective January 1, 2020.

House Bill 920, Condominium Associations Changes: Survived crossover; The bill passed the House on May 6, 2019 with a vote of 115 – 0; The bill was received by the Senate and referred to the Committee on Rules and Operations of the Senate; The bill remains eligible for consideration.

This bill aims to amend The North Carolina Condominium Act in a variety of ways. First, the bill removes duplicative language requiring a licensed architect or engineer to certify the contents of the plat/plan for the condo.

Second, the bill amends the statutory requirements for the contents of a condo declaration to include: (1) a limit of 7 years from the date the declaration was recorded on the right of the declarant to exercise development if no time limit is provided and (2) provides a mechanism to exercise an option provided in the declaration to extend development or special declarant rights by 67% of allocated votes in the association. This extension is limited to no more than 10 years.

Third, this bill seeks to establish a presumption in favor of valid condominium establishment and allows the executive board to take action to (1) cure defects, (2) conform to lender requirements, and (3) comply with laws and regulations. The bill further provides that any amendment recorded in the office of the register of deeds in the county where the condo is can operate as a correction of the declaration and is effective as of the date the declaration.

Finally, this bill adds a new section to provide for a mechanism for judicial reformation of a declaration with the clerk of superior court, including several conditions that must be met before a clerk to reform a declaration.

House Bill 877, HOA and Condo Declaration Amendments: Did not survive crossover deadline; This bill was in the House Committee on Judiciary as of the deadline; The bill is no longer eligible for consideration this session.

This bill aims to amend the North Carolina Planned Community and the Condominium act by lowering the threshold for declaration amendments from 67% to a simple majority of “more than

50%.” If passed this bill would become effective when it became law and would apply to amendments to declarations executed on or after the date it became effective.

House Bill 620, Street Database/Manual/Public Record Except: Survived crossover; The bill passed the House on May 7, 2019 with a vote of 117 – 0; The bill was received by the Senate and referred to the Committee on Rules and Operations of the Senate; The bill remains eligible for consideration.

The bill in current form has been significantly watered down. This bill now does three things. First, it would require the NC DOT to compile a readily available Public Street Information Database. The database is to be updated monthly and convey a variety of information regarding the status of certain roads. The second aim of this bill is to require NCDOT to update the Subdivision Roads Minimum Construction Standards Manual by July 1, 2020. This update is then to be followed up by subsequent regular updates and reported to the House. Finally, this bill aims to amend the laws around public records to designate proprietary design work, work product, and intra-agency communications related to the review of a proposal as confidential information during the competitive bid process.

If passed, this act would become effective when signed by the Governor.

House Bill 788, EV Charging Station/Parking: Did not survive the crossover deadline; after clearing the House Transportation Committee on April 18, 2019, this bill remained in the House Committee on Judiciary as the crossover deadline passed; The companion bill (Senate Bill 511) also did not survive crossover; This bill is no longer eligible for consideration in this session.

This bill aims to prohibit parking of a vehicle in an electric vehicle charging station which has appropriate signage if that vehicle is not plugged into the charging station. Currently there is no penalty under North Carolina law for such an action. The fine for violation would be \$100.

If passed, this act would become effective December 1, 2019.

House Bill 796, Emotional Support Animals/Rental Units: Survived crossover; The bill passed the House on May 7, 2019 with a vote of 115 – 1; The bill was received by the Senate and referred to the Committee on Rules and Operations of the Senate; The bill remains eligible for consideration.

This bill seeks to require landlords to make reasonable accommodations for persons with disabilities to have medically approved emotional support animals in dwelling units and creates a misdemeanor level offense for any person who misrepresents a need for an emotional support animal to a landlord. The accommodations prohibit a landlord from terminating or failing to renew a tenancy, refusing to enter into a rental agreement, or otherwise retaliating in the rental of a dwelling because of a tenant, applicant or household member’s disability or use of emotional support animal.

If passed, this act would become effective for rental agreements or leases entered into after January 1, 2020.