NC BILLS 902 AND 118 SIGNED BY GOVERNOR COOPER

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HOUSE BILLS 902 AND 118 SIGNED BY GOVERNOR AND ARE NOW LAW

HOUSE BILL 902

AN ACT TO (AMONG OTHER THINGS) CLARIFY THE AUTHORITY OF OWNERS ASSOCIATIONS TO IMPOSE CHARGES FOR STATEMENTS OF UNPAID ASSESSMENTS (AND) TO PROVIDE LIMITED IMMUNITY FROM COVID-19 RELATED CLAIMS ARISING FROM THE REOPENING OF PRIVATELY OWN COMMUNITY SWIMMING POOLS IN ACCORDANCE WITH EXECUTIVE ORDERS ISSUED BY THE GOV. DURING THE COVID-19 STATE OF EMERGENCY

Parts IV and VI of House Bill 902 may significantly impact the business operations and practices of North Carolina condominium and planned community associations.

Part IV - Association Charges for Statements of Unpaid Assessments

Sections 3-102 (12a) and 3-118(b) of both Chapters 47C and 47F are amended to clarify the reasonable fees associations and their managers may charge for providing statements of unpaid assessments. In the past, fees charged for providing the statements have varied widely across the state resulting in complaints from owners and real estate closing attorneys and the filing of at least one class-action lawsuit claiming fees charged were excessive.

Associations, their managers and agents may now lawfully charge a reasonable fee for providing statements of unpaid assessments and other charges, but that fee may not exceed $200 per statement or request. An additional expedite fee in an amount not to exceed $100 may be charged for a statement that needs to be provided within 48 hours of closing. The statements must be furnished within 10 business days after receipt of the request.

SADL Comment: Legislative action in this area was prompted by prior inconsistencies in connection with the preparation of these statements. While the imposition of fixed fee caps can become a problem over time, the caps established appear to be reasonable and consistent with those established in other states. The passage of this bill will bring clarity and consistency in this area which will benefit associations, managers and owners.

Part VI - Limited Immunity from COVID-19 Related Claims Arising from the Reopening of Privately Owned Community Swimming Pools

A new Article 8 is added to Chapter 99 E of the general statutes entitled "Private Pools COVID-19 Limited Liability." Article 8 protects the operators and owners of community pools (which includes private pools operated by condominium and planned community associations) from

claims and actions seeking damages for injury or death resulting from COVID-19 which are alleged to have resulted from the reopening of the community pool. These protections are available if:

1. The pool was reopened and has been operated in accordance with all Executive Orders of the Governor, including, without limitation, Executive Order 141; and
2. The claim is not based on the gross negligence, wanton conduct or intentional wrongdoing of the owner or operator.

SADL Comment: This legislative action provides helpful and much-needed protection for associations and their representatives, especially since most liability insurance policies exclude protection against claims based on infection. In order to ensure that this protection will be available, associations need to carefully ensure that they are complying with all of the requirements of the Executive Orders of the Governor including Executive Order 141 and that they can verify their compliance.

HB 902 was signed by the Governor on July 2. Click here to read HB 902.

HOUSE BILL 118

AN ACT TO PROVIDE LIMITED IMMUNITY FROM LIABILITY FOR CLAIMS BASED ON TRANSMISSION OF CORONA VIRUS DISEASE 2019 (COVID-19)

House Bill 118 applies broadly to businesses, nonprofits and individuals, including planned community and condominium associations and provides that associations shall not be liable for claims for relief arising from any act or omission alleged to have resulted in the contraction of COVID-19 if the act or omission does not amount to gross negligence, willful or wanton conduct, or intentional wrongdoing. In practical terms, the bill provides protection from COVID-19 claims based on ordinary negligence.

In order to be protected, the Association must provide "reasonable notice of actions taken . . . for the purpose of reducing the risk of transmission of COVID-19 to individuals" who are present on the association's premises. Associations are not responsible for ensuring that individuals comply with rules, policies or guidelines contained in the notice. Associations should maintain records of the notice that was provided and how it was provided.

In addition, Associations should be sure that they comply with all applicable governmental orders and directives so they will not be subject to a claim that they have been "grossly negligent" by failing to do so.

SADL Comment: Please let us know if we can help with the preparation of the required notice or with a plan for providing it as the law requires.

HB 118 was signed by the Governor on July 2. Click here to read HB 118.