

SECOND REGULAR SESSION

HOUSE BILL NO. 1347

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARRIS (Sponsor), LIESE, FISCHER (107), KUESSNER,
LAMPE AND MEADOWS (Co-sponsors).

3345L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 445, RSMo, by adding thereto seventy-six new sections relating to the uniform planned community act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 445, RSMo, is amended by adding thereto seventy-six new sections,
2 to be known as sections 445.151, 445.152, 445.153, 445.154, 445.155, 445.156, 445.157,
3 445.158, 445.159, 445.160, 445.161, 445.162, 445.163, 445.164, 445.201, 445.202, 445.203,
4 445.204, 445.205, 445.206, 445.207, 445.208, 445.209, 445.210, 445.211, 445.212, 445.213,
5 445.214, 445.215, 445.216, 445.217, 445.218, 445.219, 445.220, 445.221, 445.222, 445.223,
6 445.301, 445.302, 445.303, 445.304, 445.305, 445.306, 445.307, 445.308, 445.309, 445.310,
7 445.311, 445.312, 445.313, 445.314, 445.315, 445.316, 445.317, 445.318, 445.319, 445.401,
8 445.402, 445.403, 445.404, 445.405, 445.406, 445.407, 445.408, 445.409, 445.410, 445.411,
9 445.412, 445.413, 445.414, 445.415, 445.416, 445.417, 445.418, 445.419 and 445.420, to read
10 as follows:

445.151. Sections 445.151 to 445.420 shall be known and may be cited as the
2 **"Uniform Planned Community Act".**

445.152. 1. Sections 445.151 to 445.420 apply to all planned communities created
2 **within this state after August 28, 2010; unless such a planned community contains no more**
3 **than twelve units, and is not subject to any development rights.**

4 **2. Except as provided in subsection 3 of this section, sections 445.155, 445.156,**
5 **445.157, 445.203, 445.204, 445.221, subdivisions (1) to (6) and (11) to (15) of subsection 1**
6 **of section 445.302, sections 445.311, 445.316, 445.318, 445.409 and 445.417, and section**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

7 **445.153, to the extent necessary in construing any of those sections, apply to all planned**
8 **communities created in this state before August 28, 2010; but those sections apply only with**
9 **respect to events and circumstances occurring after August 28, 2010, and do not invalidate**
10 **existing provisions of the declaration, bylaws or plats of those planned communities.**

11 **3. If a planned community created within this state before August 28, 2010,**
12 **contains no more than twelve units and is not subject to any development rights, it is**
13 **subject only to sections 445.155, 445.156 and 445.157 unless the declaration is amended in**
14 **conformity with applicable law and with the procedures and requirements of the**
15 **declaration to take advantage of the provisions of subsection 4 of this section, in which case**
16 **all the sections enumerated in subsection 2 of this section apply to that planned community.**

17 **4. In the case of amendments to the declaration, bylaws and plats of any planned**
18 **community created before August 28, 2010:**

19 **(1) If the result accomplished by the amendment was permitted by law prior to the**
20 **adoption of sections 445.151 to 445.420, the amendment may be made either in accordance**
21 **with that law, in which case that law applies to that amendment, or may be made under**
22 **sections 445.151 to 445.420;**

23 **(2) If the result accomplished by the amendment is permitted by sections 445.151**
24 **to 445.420, and was not permitted by law prior to sections 445.151 to 445.420, the**
25 **amendment may be made under sections 445.151 to 445.420. An amendment to the**
26 **declaration, bylaws or plats authorized by this subsection to be made under sections**
27 **445.151 to 445.420 shall be adopted in conformity with applicable law and with the**
28 **procedures and requirements specified by that amendment. If any such amendment grants**
29 **to any person any rights, powers or privileges permitted by sections 445.151 to 445.420, all**
30 **correlative obligations, liabilities and restrictions in sections 445.151 to 445.420 also apply**
31 **to that person.**

32 **5. Sections 445.151 to 445.420 do not apply to a planned community in which all**
33 **units are restricted exclusively to nonresidential use unless the declaration provides that**
34 **the chapter does apply to that planned community. Sections 445.151 to 445.420 apply to**
35 **a planned community containing both units which are restricted exclusively to**
36 **nonresidential use, and other units which are not so restricted, only if the declaration so**
37 **provides or if the real estate comprising the units which may be used for residential**
38 **purposes would be a planned community in the absence of the units which may not be used**
39 **for residential purposes.**

40 **6. Sections 445.151 to 445.420 do not apply to planned communities or units located**
41 **outside this state, but sections 445.402 to 445.408 apply to all contracts for the disposition**
42 **thereof signed in this state by any party.**

445.153. In the declaration and bylaws, unless specifically provided otherwise or
2 the context otherwise requires, and in sections 445.151 to 445.420, the following terms shall
3 mean:

4 (1) "Affiliate of a declarant", any person who controls, is controlled by, or is under
5 common control with a declarant. A person controls a declarant if the person is a general
6 partner, officer, director, or employer of the declarant; directly or indirectly or acting in
7 concert with one or more other persons, or through one or more subsidiaries, owns,
8 controls, holds with power to vote, or holds proxies representing, more than twenty percent
9 of the voting interest in the declarant; controls in any manner the election of a majority of
10 the directors of the declarant; or has contributed more than twenty percent of the capital
11 of the declarant. A person is controlled by a declarant if the declarant is a general partner,
12 officer, director, or employer of the person; directly or indirectly or acting in concert with
13 one or more other persons, or through one or more subsidiaries, owns, controls, holds with
14 power to vote, or holds proxies representing, more than twenty percent of the voting
15 interest in the person; controls in any manner the election of a majority of the directors of
16 the person; or has contributed more than twenty percent of the capital of the person.
17 Control does not exist if the powers described in this paragraph are held solely as security
18 for an obligation and are not exercised;

19 (2) "Allocated interests", the common expense liability and votes in the association
20 allocated to each unit;

21 (3) "Association" or "unit owners association", the unit owners association
22 organized under section 445.301;

23 (4) "Common elements", any real estate within a planned community owned or
24 leased by the association, other than a unit;

25 (5) "Common expense liability", the liability for common expenses allocated to each
26 unit under section 445.207;

27 (6) "Common expenses", expenditures made by or financial liabilities of the
28 association, together with any allocations to reserves;

29 (7) "Condominium", real estate, portions of which are designated for separate
30 ownership and the remainder of which is designated for common ownership solely by the
31 owners of those portions. Real estate is not a condominium unless the undivided interests
32 in the common elements are vested in the unit owners;

33 (8) "Conversion building", a building that at any time before creation of the
34 planned community was occupied wholly or partially by persons other than purchasers
35 and persons who occupy with the consent of purchasers;

36 (9) "Cooperative", real estate owned by a corporation, trust, trustee, partnership,
37 or unincorporated association, where the governing instruments of that organization
38 provide that each of the organization's members, partners, stockholders, or beneficiaries
39 is entitled to exclusive occupancy of a designated portion of that real estate;

40 (10) "Dealer", a person in the business of selling units for such person's own
41 account;

42 (11) "Declarant", any person or group of persons acting in concert who as part of
43 a common promotional plan, offers to dispose of such person's interest in a unit not
44 previously disposed of; or reserves or succeeds to any special declarant right;

45 (12) "Declaration", any instruments, however denominated, that create a planned
46 community, and any amendments to those instruments;

47 (13) "Development rights", any right or combination of rights reserved by a
48 declarant in the declaration to add real estate to a planned community; to create units,
49 common elements or limited common elements within a planned community; to subdivide
50 units or convert units into common elements; or to withdraw real estate from a planned
51 community;

52 (14) "Dispose" or "disposition", a voluntary transfer to a purchaser of any legal
53 or equitable interest in a unit, but does not include the transfer or release of a security
54 interest;

55 (15) "Executive board", the body, regardless of name, designated in the declaration
56 to act on behalf of the association;

57 (16) "Identifying number", a symbol or address that identifies only one unit in a
58 planned community;

59 (17) "Leasehold planned community", a planned community in which all or a
60 portion of the real estate is subject to a lease the expiration or termination of which will
61 terminate the planned community or reduce its size;

62 (18) "Limited common element", a portion of the common elements allocated by
63 the declaration or by operation of subdivision (2) or (4) of section 445.202 for the exclusive
64 use of one or more but fewer than all of the units;

65 (19) "Master association", an organization described in section 445.220, whether
66 or not it is also an association described in section 445.301;

67 (20) "Offering", any advertisement, inducement, solicitation, or attempt to
68 encourage any person to acquire any interest in a unit, other than as security for an
69 obligation. An advertisement in a newspaper or other periodical of general circulation, or
70 in any broadcast medium to the general public, of a planned community not located in this

71 state, is not an offering if the advertisement states that an offering may be made only in
72 compliance with the law of the jurisdiction in which the planned community is located;

73 (21) "Person", a natural person, corporation, business trust, estate, trust,
74 partnership, association, joint venture, government, governmental subdivision or agency,
75 or other legal or commercial entity. In the case of a land trust, however, person means the
76 beneficiary of the trust rather than the trust or the trustee;

77 (22) "Planned community", real estate with respect to which any person, by virtue
78 of such person's ownership of a unit, is obligated to pay for real property taxes, insurance,
79 premiums, maintenance, or improvement of other real estate described in a declaration.
80 For purposes of sections 445.151 to 445.420, neither a cooperative nor a condominium is
81 a planned community, but real estate comprising a condominium or cooperative may be
82 part of a planned community. Ownership of a unit does not include holding a leasehold
83 interest of less than twenty years in a unit, including renewal options;

84 (23) "Purchaser", any person, other than a declarant or a dealer, who by means
85 of a voluntary transfer acquires a legal or equitable interest in a unit, other than a
86 leasehold interest, including renewal options, of less than twenty years; or as security for
87 an obligation;

88 (24) "Real estate", any leasehold or other estate or interest in, over or under land,
89 including structures, fixtures and other improvements and interests which by custom,
90 usage or law pass with a conveyance of land though not described in the contract of sale
91 or instrument of conveyance. Real estate includes parcels with or without upper or lower
92 boundaries, and spaces that may be filled with air or water;

93 (25) "Residential purposes", use for dwelling or recreational purposes, or both;

94 (26) "Security interest", an interest in real estate or personal property, created by
95 contract or conveyance, which secures payment or performance of an obligation. The term
96 includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for
97 deed, land sales contract, lease intended as security, assignment of lease or rents intended
98 as security, pledge of an ownership interest in an association and any other consensual lien
99 or title retention contract intended as security for an obligation;

100 (27) "Special declarant rights", rights reserved for the benefit of a declarant to
101 complete improvements indicated on plats and plans filed with the declaration; to exercise
102 any development right; to maintain sales offices, management offices, signs advertising the
103 planned community, and models; to use easements through the common elements for the
104 purpose of making improvements within the planned community or within real estate
105 which may be added to the planned community; to make the planned community part of
106 a larger planned community or group of planned communities; to make the planned

107 community subject to a master association; or to appoint or remove any officer or executive
108 board member of the association or any master association during any period of declarant
109 control. Special declarant rights are interests in real estate for all purposes;

110 (28) "Time share", a right to occupy a unit or any of several units during five or
111 more separated time periods over a period of at least five years, including renewal options,
112 whether or not coupled with an estate or interest in a planned community or a specified
113 portion thereof;

114 (29) "Unit", a physical portion of the planned community designated for separate
115 ownership or occupancy, the boundaries of which are described under subdivision (5) of
116 subsection 1 of section 445.205;

117 (30) "Unit owner", a declarant or other person who owns a unit, or a lessee of a
118 unit in a leasehold planned community whose lease expires simultaneously with any lease
119 the expiration or termination of which will remove the unit from the planned community,
120 but does not include a person having an interest in a unit solely as security for an
121 obligation.

445.154. Except as expressly provided in sections 445.151 to 445.420, provisions of
2 sections 445.151 to 445.420 shall not be varied by agreement, and rights conferred by
3 sections 445.151 to 445.420 shall not be waived. A declarant shall not act under a power
4 of attorney, or use any other device, to evade the limitations or prohibitions of sections
5 445.151 to 445.420 or the declaration.

445.155. 1. If there is any unit owner other than a declarant, each unit that has
2 been created, together with its interest in the common elements, constitutes for all purposes
3 a separate parcel of real estate.

4 2. If there is any unit owner other than a declarant, each unit shall be separately
5 taxed and assessed, and no separate tax or assessment may be rendered against any
6 common elements for which a declarant has reserved no development rights.

7 3. Any portion of the common elements for which the declarant has reserved any
8 development rights shall be separately taxed and assessed against the declarant, and the
9 declarant alone is liable for payment of those taxes.

10 4. If there is no unit owner other than a declarant, the real estate comprising the
11 planned community may be taxed and assessed in any manner provided by law.

445.156. 1. Except as provided in subsection 2 of this section, no building code shall
2 impose any requirement upon any structure in a planned community which it would not
3 impose upon a physically identical structure under a different form of ownership.
4 Otherwise, no provision of sections 445.151 to 445.420 invalidates or modifies any provision
5 of any building code.

6 **2. Subsection 1 of this section shall not apply to any ordinance, rule, regulation,**
7 **charter provision or contract provision relating to the financing of housing construction,**
8 **rehabilitation or purchases provided by or through a housing finance program established**
9 **and operated under state or federal law by a state or local agency or local unit of**
10 **government or to any ordinance which has as its purpose the application or enforcement**
11 **of minimum housing standards.**

445.157. 1. If a unit is acquired by eminent domain, or if part of a unit is acquired
2 **by eminent domain leaving the unit owner with a remnant which may not practically or**
3 **lawfully be used for any purpose permitted by the declaration, the award shall compensate**
4 **the unit owner for said unit owner's unit and its interest in the common elements, whether**
5 **or not any common elements are acquired. Upon acquisition, unless the decree otherwise**
6 **provides, that unit's allocated interests are automatically reallocated to the remaining units**
7 **in proportion to the respective allocated interests of those units before the taking, and the**
8 **association shall promptly prepare, execute, and record an amendment to the declaration**
9 **reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken**
10 **under this subsection is thereafter a common element.**

11 **2. Except as provided in subsection 1 of this section, if part of a unit is acquired by**
12 **eminent domain, the award shall compensate the unit owner for the reduction in value of**
13 **the unit and its interest in the common elements, whether or not any common elements are**
14 **acquired. Upon acquisition, unless the decree otherwise provides:**

15 **(1) That units allocated interests are reduced in proportion to the reduction in the**
16 **size of the unit, or on any other basis specified in the declaration; and**

17 **(2) The portion of the allocated interests divested from the partially acquired unit**
18 **are automatically reallocated to that unit and the remaining units in proportion to the**
19 **respective allocated interests of those units before the taking, with the partially acquired**
20 **unit participating in the reallocation on the basis of its reduced allocated interests.**

21 **3. If part of the common elements is acquired by eminent domain, the portion of**
22 **the award attributable to the common elements taken shall be paid to the association. Any**
23 **portion of the award attributable to the acquisition of a limited common element shall be**
24 **equally divided among the owners of the units to which that limited common element was**
25 **allocated at the time of acquisition.**

26 **4. The court decree shall be recorded in every county in which any portion of the**
27 **planned community is located.**

445.158. The principles of law and equity, including the law of corporations and
2 **unincorporated associations, the law of real property and the law relative to capacity to**
3 **contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress,**

4 coercion, mistake, receivership, substantial performance, or other validating or
5 invalidating cause supplement the provisions of sections 445.151 to 445.420, except to the
6 extent inconsistent with sections 445.151 to 445.420.

2 **445.159.** Sections 445.151 to 445.420 are intended as a unified coverage of its
3 subject matter, no provision shall be construed to be impliedly repealed by subsequent
4 legislation if that construction can reasonably be avoided.

2 **445.160.** Sections 445.151 to 445.420 shall be applied and construed so as to
3 effectuate their general purpose to make uniform the law with respect to the subject of
4 sections 445.151 to 445.420 among states enacting it.

2 **445.161.** If any provision or clause of sections 445.151 to 445.420 or application
3 thereof to any person or circumstances is held invalid, such invalidity shall not affect other
4 provisions or applications of sections 445.151 to 445.420 which can be given effect without
5 the invalid provision or application, and to this end the provisions of sections 445.151 to
6 445.420 are declared to be severable.

2 **445.162. 1.** The court, upon finding as a matter of law that a contract or contract
3 clause was unconscionable at the time the contract was made, may refuse to enforce the
4 contract, enforce the remainder of the contract without the unconscionable clause, or limit
5 the application of any unconscionable clause in order to avoid an unconscionable result.

6 **2.** Whenever it is claimed, or appears to the court, that a contract or any contract
7 clause is or may be unconscionable, the parties, in order to aid the court in making the
8 determination, shall be afforded a reasonable opportunity to present evidence as to:

9 **(1)** The commercial setting of the negotiations;

10 **(2)** Whether a party has knowingly taken advantage of the inability of the other
11 party reasonably to protect such other party's interests by reason of physical or mental
12 infirmity, illiteracy, or inability to understand the language of the agreement or similar
13 factors;

14 **(3)** The effect and purpose of the contract or clause;

15 **(4)** If a sale, any gross disparity, at the time of contracting, between the amount
16 charged for the property and the value of the property measured by the price at which
17 similar property was readily obtainable in similar transactions, but a disparity between the
18 contract price and the value of the property measured by the price at which similar
19 property was readily obtainable in similar transactions does not, of itself, render the
20 contract unconscionable; and

21 **(5)** If the contract is for the sale of a unit restricted to residential purposes, whether
22 any clause is so unfair or one-sided, or resulted from procedural abuse in contract
formation, in light of the relative sophistication of the parties.

1 **445.163.** Every contract or duty governed by sections 445.151 to 445.420 imposes
2 an obligation of good faith in its performance or enforcement.

3 **445.164. 1.** The remedies provided by sections 445.151 to 445.420 shall be liberally
4 administered to the end that the aggrieved party is put in as good a position as if the other
5 party had fully performed. However, consequential, special, or punitive damages may not
6 be awarded except as specifically provided in sections 445.151 to 445.420 or by other rule
7 of law.

8 **2.** Any right or obligation declared by sections 445.151 to 445.420 is enforceable by
9 judicial proceeding.

10 **445.201.** A planned community may be created under sections 445.151 to 445.420
11 only by recording a declaration executed in the same manner as a deed. The declaration
12 shall be recorded in every county in which any portion of the planned community is
13 located, and shall be indexed in the name of the planned community and the association
14 and in the name of each person executing the declaration.

15 **445.202.** Except as provided by the declaration:

16 **(1)** If walls, floors or ceilings of a unit are designated as the boundaries of that unit,
17 all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished
18 flooring and any other materials constituting any part of the finished surfaces thereof are
19 a part of the unit, and all other portions of the walls, floors or ceilings are a part of the
20 common elements;

21 **(2)** If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any
22 other fixture lies partially within and partially outside the designated boundaries of a unit,
23 any portion thereof serving only that unit is a limited common element allocated solely to
24 that unit, and any portion thereof serving more than one unit or any portion of the
25 common elements is a part of the common elements;

26 **(3)** Subject to the provisions of subdivision (2) of this section, all spaces, interior
27 partitions and other fixtures and improvements within the boundaries of a unit are a part
28 of the unit;

29 **(4)** Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies,
30 patios, and all exterior doors and windows or other fixtures designed to serve a single unit,
31 but located outside the unit's boundaries, are limited common elements allocated
32 exclusively to that unit.

33 **445.203. 1.** All provisions of the declaration and bylaws are severable.

34 **2.** The rule against perpetuities shall not be applied to defeat any provision of the
35 declaration, bylaws, rules or regulations adopted under subdivision (1) of subsection 1 of
36 section 445.302.

5 **3. In the event of a conflict between the provisions of the declaration and the**
6 **bylaws, the declaration prevails except to the extent the declaration is inconsistent with**
7 **sections 445.151 to 445.420.**

8 **4. Title to a unit and common elements is not rendered unmarketable or otherwise**
9 **affected by reason of nonmaterial failure of the declaration to comply with sections 445.151**
10 **to 445.420. Whether a material failure impairs marketability of title is not affected by**
11 **sections 445.151 to 445.420.**

445.204. A description of a unit which sets forth the name of the planned
2 **community, the recording data for the declaration, the county in which the planned**
3 **community is located, and the identifying number of the unit is a sufficient legal**
4 **description of that unit and all rights, obligations and interests appurtenant to that unit**
5 **which were created by the declaration or bylaws.**

445.205. 1. The declaration for a planned community shall contain:

2 **(1) The names of the planned community and the association;**

3 **(2) The name of every county in which any part of the planned community is**
4 **situated;**

5 **(3) A legally sufficient description of the real estate included in the planned**
6 **community;**

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

9 **(5) A description of the boundaries of each unit created by the declaration,**
10 **including the unit's identifying number;**

11 **(6) A description of any real estate which is or shall become common elements and**
12 **limited common elements, other than those specified in subdivisions (2) and (4) of section**
13 **445.202, as provided in section 445.209;**

14 **(7) A description of any real estate, except real estate subject to development rights,**
15 **which may be allocated subsequently as limited common elements, other than limited**
16 **common elements specified in subdivisions (2) and (4) of section 445.202, together with a**
17 **statement that they may be so allocated;**

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

22 **(9) If any development right may be exercised with respect to different parcels of**
23 **the real estate at different times, a statement to that effect together with:**

24 (a) Either a statement fixing the boundaries of those portions and regulating the
25 order in which those portions may be subjected to the exercise of each development right,
26 or a statement that no assurances are made in those regards; and

27 (b) A statement as to whether, if any development right is exercised in any portion
28 of the real estate subject to that development right, that development right shall be
29 exercised in all or in any other portion of the remainder of that real estate;

30 (10) Any other conditions or limitations under which the rights described in
31 subdivision (8) of this subsection may be exercised or will lapse;

32 (11) An allocation to each unit of the allocated interests in the manner described
33 in section 445.207;

34 (12) Any restrictions on use, occupancy, and alienation of the units;

35 (13) The recording data for recorded easements and licenses appurtenant to or
36 included in the planned community or to which any portion of the planned community is
37 or may become subject by virtue of a reservation in the declaration; and

38 (14) All matters required by sections 445.206, 445.207, 445.208, 445.209, 445.215,
39 445.216, and subsection 4 of section 445.303.

40 2. The declaration may contain any other matters the declarant deems appropriate.

445.206. 1. Any lease the expiration or termination of which may terminate the
2 planned community or reduce its size shall be recorded. Every lessor of those leases shall
3 execute the declaration, and the declaration shall state:

4 (1) The recording data for the lease;

5 (2) The date on which the lease is scheduled to expire;

6 (3) A legally sufficient description of the real estate subject to the lease;

7 (4) Any right of the unit owners to redeem the revision and the manner whereby
8 those rights may be exercised, or a statement that they do not have those rights;

9 (5) Any right of the unit owners to remove any improvements after the expiration
10 or termination of the lease, or a statement that they do not have those rights; and

11 (6) Any rights of the unit owners to renew the lease and the conditions of any
12 renewal, or a statement that they do not have those rights.

13 2. After the declaration for a leasehold planned community is recorded, neither the
14 lessor nor any successor in interest may terminate the leasehold interest of a unit owner
15 who makes timely payment of such unit owner's share of the rent and otherwise complies
16 with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit
17 owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill
18 any other covenant.

19 **3. Acquisition of the leasehold interest of any unit owner by the owner of the**
20 **reversion or remainder does not merge the leasehold and fee simple interests unless the**
21 **leasehold interests of all unit owners subject to that reversion or remainder are acquired.**

22 **4. If the expiration or termination of a lease decreases the number of units in a**
23 **planned community, the allocated interests shall be reallocated in accordance with**
24 **subsection 1 of section 445.157 as though those units had been taken by eminent domain.**
25 **Reallocations shall be confirmed by an amendment to the declaration prepared, executed**
26 **and recorded by the association.**

445.207. 1. The declaration shall allocate a fraction or percentage of the common
2 **expenses of the association, and a portion of the votes in the association to each unit in the**
3 **planned community, and state the formulas used to establish those allocations. Those**
4 **allocations shall not discriminate in favor of units owned by the declarant.**

5 **2. If units may be added to or withdrawn from the planned community, the**
6 **declaration shall state the formulas to be used to reallocate the allocated interests among**
7 **all units included in the planned community after the addition or withdrawal.**

8 **3. The declaration may provide:**

9 **(1) That different allocations of votes shall be made to the units on particular**
10 **matters specified in the declaration;**

11 **(2) For cumulative voting only for the purpose of electing members of the executive**
12 **board; and**

13 **(3) For class voting on specified issues affecting the class if necessary to protect**
14 **valid interests of the class. A declarant shall not utilize cumulative or class voting for the**
15 **purpose of evading any limitation imposed on declarants by sections 445.151 to 445.420,**
16 **nor may units constitute a class because they are owned by a declarant.**

17 **4. Except for minor variations due to rounding, the sum of the common expense**
18 **liabilities allocated at any time to all the units shall equal one if stated as a fraction or one**
19 **hundred percent if stated as a percentage. In the event of a discrepancy between an**
20 **allocated interest and the result derived from application of the pertinent formula, the**
21 **allocated interest prevails.**

445.208. 1. Except for the limited common elements described in subdivisions (2)
2 **and (4) of section 445.202, the declaration shall specify to which unit or units each limited**
3 **common element is allocated. That allocation shall not be altered without the consent of**
4 **the unit owners whose units are affected.**

5 **2. Except as the declaration otherwise provides, a limited common element may be**
6 **reallocated by an amendment to the declaration executed by the unit owners between or**
7 **among whose units the reallocation is made. The persons executing the amendment shall**

8 provide a copy thereof to the association, which shall record it. The amendment shall be
9 recorded in the names of the parties and the planned community.

10 3. A common element not previously allocated as a limited common element shall
11 not be so allocated except under provisions in the declaration made in accordance with
12 subdivision (7) of subsection 1 of section 445.205. The allocations shall be made by
13 amendments to the declaration.

445.209. 1. Plats and plans are a part of the declaration and are required for all
2 planned communities subject to the chapter. Separate plats and plans are not required by
3 sections 445.151 to 445.420 if all the information required by this section is contained in
4 either a plat or plan. Each plat and plan must be clear and legible and contain a
5 certification that the plat or plan contains all information required by this section.

6 2. Each plat shall show or project:

7 (1) The name and a survey or general schematic map of the entire planned
8 community;

9 (2) The location and dimensions of all real estate not subject to development rights,
10 or subject only to the development right to withdraw, and the location and dimensions of
11 all existing improvements within that real estate;

12 (3) A legally sufficient description of any real estate subject to development rights,
13 labeled to identify the rights applicable to each parcel;

14 (4) The extent of any encroachments by or upon any portion of the planned
15 community;

16 (5) To the extent feasible, a legally sufficient description of all easements serving
17 or burdening any portion of the planned community;

18 (6) Except as provided in subsection 7 of this section, the approximate location and
19 dimensions of any vertical unit boundaries not shown or projected on plans recorded
20 under subsection 4 of this section and that unit's identifying number;

21 (7) Except as provided in subsection 7 of this section, the approximate location with
22 reference to an established datum of any horizontal unit boundaries not shown or
23 projected on plans recorded under subsection 4 of this section and that unit's identifying
24 number;

25 (8) A legally sufficient description of any real estate in which the unit owners will
26 own only an estate for years, labeled as "leasehold real estate";

27 (9) The distance between noncontiguous parcels of real estate comprising the
28 planned community;

29 **(10) The approximate location and dimensions of limited common elements,**
30 **including porches, balconies and patios, other than parking spaces and the other limited**
31 **common elements described in subdivisions (2) and (4) of section 445.202; and**

32 **(11) In the case of real estate not subject to development rights, all other matters**
33 **customarily shown on land surveys.**

34 **3. A plat may also show the intended location and dimensions of any contemplated**
35 **improvement to be constructed anywhere within the planned community. Any**
36 **contemplated improvement shown shall be labeled either "SHALL BE BUILT" or "NEED**
37 **NOT BE BUILT".**

38 **4. Except as provided in subsection 7 of this section, to the extent not shown or**
39 **projected on the plats, plans of the units shall show or project:**

40 **(1) The approximate location and dimensions of the vertical boundaries of each**
41 **unit and that unit's identifying number;**

42 **(2) The approximate location of any horizontal unit boundaries, with reference to**
43 **an established datum, and that unit's identifying number; and**

44 **(3) The approximate location of any units in which the declarant has reserved the**
45 **right to create additional units or common elements, identified appropriately.**

46 **5. Unless the declaration provides otherwise, the horizontal boundaries of part of**
47 **a unit located outside of a building have the same elevation as the horizontal boundaries**
48 **of the inside part, and need not be depicted on the plats and plans.**

49 **6. Upon exercising any development right, the declarant shall record either new**
50 **plats and plans necessary to conform to the requirements of subsections 1 to 3 of this**
51 **section, or new certifications of plats and plans previously recorded if those plats and plans**
52 **conform to the requirements of those subsections.**

53 **7. Any certification of a plat required by this section shall be made by a registered**
54 **and licensed surveyor, and any certification of a plan required by this section shall be**
55 **made by an architect or engineer.**

56 **8. Plats and plans need not show the location and dimensions of the units'**
57 **boundaries or their limited common elements if:**

58 **(1) The plat shows the location and dimensions of all buildings containing or**
59 **comprising the units; and**

60 **(2) The declaration includes other information that shows or contains a narrative**
61 **description of the general layout of the units in those buildings and the limited common**
62 **elements allocated to those units.**

445.210. 1. To exercise any development right reserved under subdivision (8) of
2 **subsection 1 of section 445.205, the declarant shall prepare, execute and record an**

3 amendment to the declaration and comply with section 445.209. The declarant is the
4 owner of any units thereby created. The amendment to the declaration shall assign an
5 identifying number to each new unit created, and except in the case of subdivision or
6 conversion of units described in subsection 2 of this section, reallocate the allocated
7 interests among all units. The amendment shall describe any common elements and any
8 limited common elements thereby created and, in the case of limited common elements,
9 designate the units to which each is allocated to the extent required by section 445.208.

10 2. Development rights may be reserved within any real estate added to the planned
11 community if the amendment adding that real estate includes all matters required by
12 section 445.205 or 445.206, as the case may be, and the plats and plans include all matters
13 required by section 445.209. This provision does not extend the time limit on the exercise
14 of development rights imposed by the declaration under subdivision (8) of subsection 1 of
15 section 445.205.

16 3. Whenever a declarant exercises a development right to subdivide or convert a
17 unit previously created into additional units, common elements, or both:

18 (1) If the declarant converts the unit entirely to common elements, the amendment
19 to the declaration shall reallocate all the allocated interests of that unit among the other
20 units as if that unit had been taken by eminent domain;

21 (2) If the declarant subdivides the unit into two or more units, whether or not any
22 part of the unit is converted into common elements, the amendment to the declaration shall
23 reallocate all the allocated interests of the unit among the units created by the subdivision
24 in any reasonable manner prescribed by the declarant.

25 4. If the declaration provides, under subdivision (8) of subsection 1 of section
26 445.205, that all or a portion of the real estate is subject to the development right of
27 withdrawal:

28 (1) If all the real estate is subject to withdrawal, and the declaration does not
29 describe separate portions of real estate subject to that right, none of the real estate may
30 be withdrawn after a unit has been conveyed to a purchaser; and

31 (2) If a portion or portions are subject to withdrawal, no portion may be
32 withdrawn after a unit in that portion has been conveyed to a purchaser.

445.211. Subject to the provisions of the declaration and other provisions of law,
2 a unit owner:

3 (1) May make any improvements or alterations to said unit owner's unit that do not
4 impair the structural integrity or mechanical systems or lessen the support of any portion
5 of the planned community;

6 (2) May not change the appearance of the common elements, or the exterior
7 appearance of a unit or any other portion of the planned community, without permission
8 of the association;

9 (3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may
10 remove or alter any intervening partition or create apertures therein, even if the partition
11 in whole or in part is a common element, if those acts do not impair the structural integrity
12 or mechanical systems or lessen the support of any portion of the planned community.
13 Removal of partitions or creation of apertures under this subdivision is not an alteration
14 of boundaries.

 445.212. 1. Subject to the provisions of the declaration and other provisions of law,
2 the boundaries between adjoining units may be relocated by an amendment to the
3 declaration upon application to the association by the owners of those units. If the owners
4 of the adjoining units have specified a reallocation between their units of their allocated
5 interests, the application shall state the proposed reallocations. Unless the executive board
6 determines, within thirty days, that the reallocations are unreasonable, the association shall
7 prepare an amendment that identifies the units involved, states the reallocations, is
8 executed by those unit owners, contains words of conveyance between them, and, upon
9 recordation, is indexed in the name of the grantor and the grantee.

10 2. The association shall prepare and record plats or plans necessary to show the
11 altered boundaries between affected units, and their dimensions and identifying numbers.

 445.213. 1. If the declaration expressly so permits, a unit may be subdivided into
2 two or more units. Subject to the provisions of the declaration and other provisions of law,
3 upon application of a unit owner to subdivide a unit, the association shall prepare, execute,
4 and record an amendment to the declaration, including the plats and plans, subdividing
5 that unit.

6 2. The amendment to the declaration shall be executed by the owner of the unit to
7 be subdivided, assign an identifying number to each unit created and reallocate the
8 allocated interests formerly allocated to the subdivided unit to the new units in any
9 reasonable manner prescribed by the owner of the subdivided unit.

 445.214. The existing physical boundaries of a unit or the physical boundaries of
2 a unit reconstructed in substantial accordance with the description contained in the
3 original declaration are the legal boundaries rather than the boundaries derived from the
4 description contained regardless of vertical or lateral movement of the building, or minor
5 variance between those boundaries and the boundaries derived. This section does not
6 relieve a unit owner of liability in case of such owner's willful misconduct nor relieve a
7 declarant or any other person of liability for failure to adhere to the plats and plans.

2 **445.215.** A declarant may maintain sales offices, management offices and models
3 in units or on common elements in the planned community only if the declaration so
4 provides and specifies the rights of a declarant with regard to the number, size, location
5 and relocation thereof. Subject to any limitations in the declaration, a declarant may
6 maintain signs on the common elements advertising the planned community. The
7 provisions of this section are subject to the provisions of other state law and to local
ordinances.

2 **445.216.** 1. Subject to the provisions of section 445.312, the unit owners have an
3 easement:

4 (1) In the common elements for purposes of access to their units; and

5 (2) To use the common elements and all real estate which shall become common
6 elements for all other purposes.

7 2. Subject to the provisions of the declaration, a declarant has an easement through
8 the common elements as may be reasonably necessary for the purpose of discharging a
9 declarant's obligations or exercising special declarant rights, whether arising under
10 sections 445.151 to 445.420 or reserved in the declaration.

11 **445.217.** 1. Except in cases of amendments that may be executed by a declarant
12 under subsection 6 of section 445.209 or section 445.210; or by the association under
13 section 445.157, subsection 4 of section 445.206, subsection 3 of section 445.208, subsection
14 1 of section 445.212 or subsection 1 of section 445.213; or by certain unit owners under
15 subsection 2 of section 445.208, subsection 1 of section 445.212, subsection 2 of section
16 445.213, or subsection 2 of section 445.218, and except as limited by subsections 4 to 7 of
17 this section, the declaration, including the plats and plans, may be amended only by vote
18 or agreement of unit owners of units to which at least sixty-seven percent of the votes in the
19 association are allocated, or any larger majority the declaration specifies. The declaration
20 may specify a smaller number only if all of the units are restricted exclusively to
nonresidential use.

2 2. No action to challenge the validity of an amendment adopted by the association
3 under this section may be brought more than one year after the amendment is recorded.

4 3. Every amendment to the declaration shall be recorded in every county in which
5 any portion of the planned community is located, and is effective only upon recordation.
6 Every amendment, except an amendment under subsection 1 of section 445.212, shall be
7 indexed in the name of the planned community and the association and in the name of the
8 parties executing the amendment.

9 4. Except to the extent expressly permitted or required by other provisions of
10 sections 445.151 to 445.420, no amendment may create or increase the special declarant

21 rights, increase the number of units or change the boundaries of any unit or the allocated
22 interests of a unit in the absence of unanimous consent of the unit owners.

23 **5. An amendment to the declaration may be adopted that prohibits or materially**
24 **restricts the permitted uses of, or behavior in, a unit or the number or other qualifications,**
25 **of persons who may occupy units, by vote or agreement of unit owners to which eighty**
26 **percent of the votes in the association are allocated; provided however, that the amendment**
27 **shall provide reasonable protection for a valid use or occupancy existing at the time the**
28 **amendment was adopted.**

29 **6. The time limits specified in the declaration under subdivision (8) of subsection**
30 **1 of section 445.205 within which reserved development rights shall be exercised may be**
31 **extended, and additional development rights may be created, if persons entitled to cast at**
32 **least eighty percent of the votes in the association, including eighty percent of the votes**
33 **allocated to units not owned by the declarant, agree to that action. The agreement is**
34 **effective thirty days after an amendment to the declaration reflecting the terms of the**
35 **agreement is recorded, unless all persons holding the affected special declarant rights or**
36 **security interests in those rights:**

37 **(1) Record a written objection within that thirty-day period in which case the**
38 **amendment is void; or**

39 **(2) Consent in writing at the time the amendment is recorded, in which case the**
40 **amendment is effective when recorded.**

41 **7. Amendments to the declaration required by sections 445.151 to 445.420 to be**
42 **recorded by the association shall be prepared, executed, recorded and certified on behalf**
43 **of the association by any officer of the association designated for that purpose or, in the**
44 **absence of designation, by the president of the association.**

445.218. 1. Except in the case of a taking of all the units by eminent domain, a
2 **planned community may be terminated only by agreement of unit owners of units to which**
3 **at least eighty percent of the votes in the association are allocated, or any larger percentage**
4 **the declaration specifies. The declaration may specify a smaller percentage only if all of**
5 **the units in the planned community are restricted exclusively to nonresidential uses.**

6 **2. An agreement to terminate shall be evidenced by the execution of a termination**
7 **agreement, or ratifications thereof, in the same manner as a deed, by the requisite number**
8 **of unit owners. The termination agreement shall specify a date after which the agreement**
9 **will be void unless it is recorded before that date. A termination agreement and all**
10 **ratifications thereof must be recorded in every county in which a portion of the planned**
11 **community is situated, and is effective only upon recordation.**

12 **3. In the case of a planned community containing only units having horizontal**
13 **boundaries described in the declaration, a termination agreement may provide that all the**
14 **common elements and units of the planned community shall be sold following termination.**
15 **If, under the agreement, any real estate in the planned community is to be sold following**
16 **termination, the termination agreement shall set forth the minimum terms of the sale.**

17 **4. In the case of a planned community containing any units not having horizontal**
18 **boundaries described in the declaration, a termination agreement may provide for sale of**
19 **the common elements, but shall not require that the units be sold following termination,**
20 **unless the declaration as originally recorded provided otherwise or unless all the unit**
21 **owners consent to the sale.**

22 **5. The association, on behalf of the unit owners, may contract for the sale of real**
23 **estate in the planned community, but the contract is not binding until approved under**
24 **subsections 1 and 2 of this section. If any real estate in the planned community is to be sold**
25 **following termination, title to that real estate, upon termination, vests in the association as**
26 **trustee for the holders of all interests in the units. Thereafter, the association has all**
27 **powers necessary and appropriate to effect the sale. Until the sale has been concluded and**
28 **the proceeds thereof distributed, the association continues in existence with all powers it**
29 **had before termination. Proceeds of the sale shall be distributed to unit owners and lien**
30 **holders as their interests may appear, in proportion to the respective interests of unit**
31 **owners as provided in subsection 8 of this section. Unless otherwise specified in the**
32 **termination agreement, as long as the association holds title to the real estate, each unit**
33 **owner and any successors in interest have an exclusive right to occupancy of the portion**
34 **of the real estate that formerly constituted such owner's unit. During the period of that**
35 **occupancy, each unit owner and any successors in interest remain liable for all assessments**
36 **and other obligations imposed on unit owners by sections 445.151 to 445.420 or the**
37 **declaration.**

38 **6. If the real estate constituting the planned community is not to be sold following**
39 **termination, title to the common elements and, in a planned community containing only**
40 **units having horizontal boundaries described in the declaration, title to all the real estate**
41 **in the planned community, vests in the unit owners upon termination as tenants in common**
42 **in proportion to their respective interests as provided in subsection 8 of this section, and**
43 **liens on the units shift accordingly. While the tenancy in common exists, each unit owner**
44 **and any successors in interest have an exclusive right to occupancy of the portion of the**
45 **real estate that formerly constituted said owner's unit.**

46 **7. Following termination of the planned community, the proceeds of any sale of real**
47 **estate, together with the assets of the association, are held by the association as trustee for**

48 unit owners and holders of liens on the units as their interests may appear. Following
49 termination, creditors of the association holding liens on the units which were recorded
50 before termination may enforce those liens in the same manner as any lien holder. All
51 other creditors of the association are to be treated as if they had perfected liens on the units
52 immediately before termination.

53 **8. The respective interests of unit owners referred to in subsections 5 to 7 of this**
54 **section are as follows:**

55 **(1) Except as provided in subdivision (2) of this subsection, the respective interests**
56 **of unit owners are the fair market values of their units and limited common elements**
57 **immediately before the termination, as determined by one or more independent appraisers**
58 **selected by the association. The decision of the independent appraisers shall be distributed**
59 **to the unit owners and becomes final unless disapproved within thirty days after**
60 **distribution by unit owners of units to which twenty-five percent of the votes in the**
61 **association are allocated. The proportion of any unit owner's interest to that of all unit**
62 **owners is determined by dividing the fair market value of that unit owner's unit by the**
63 **total fair market values of all the units and common elements;**

64 **(2) If any unit or any limited common element is destroyed to the extent that an**
65 **appraisal of the fair market value thereof before destruction cannot be made, the interests**
66 **of all unit owners are their respective common expense liabilities immediately before the**
67 **termination.**

68 **9. Except as provided in subsection 10 of this section, foreclosure or enforcement**
69 **of a lien or encumbrance against the entire planned community does not of itself terminate**
70 **the planned community, and foreclosure or enforcement of a lien or encumbrance against**
71 **a portion of the planned community does not of itself withdraw that portion from the**
72 **planned community. Foreclosure or enforcement of a lien or encumbrance against**
73 **withdrawable real estate does not of itself withdraw that real estate from the planned**
74 **community, but the person taking title thereto has the right to require from the association,**
75 **upon request, an amendment excluding the real estate from the planned community.**

76 **10. If a lien or encumbrance against a portion of the real estate comprising the**
77 **planned community has priority over the declaration, and the lien or encumbrance has not**
78 **been partially released, the parties foreclosing the lien or encumbrance may upon**
79 **foreclosure, record an instrument excluding the real estate subject to that lien or**
80 **encumbrance from the planned community.**

445.219. The declaration may require that all or a specified number or percentage
2 **of the mortgagees or beneficiaries of deeds of trust encumbering the units approve**

3 specified actions of the unit owners or the association as a condition to the effectiveness of
4 those actions, but no requirement for approval may operate to:

5 (1) Deny or delegate control over the general administrative affairs of the
6 association by the unit owners or the executive board; or

7 (2) Prevent the association or the executive board from commencing, intervening
8 in, or settling any litigation or proceeding, or receiving and distributing any insurance
9 proceeds except under section 445.313.

445.220. 1. If the declaration for a planned community provides that any of the
2 powers described in section 445.302 are to be exercised by or may be delegated to a profit
3 or nonprofit corporation or unincorporated association which exercises those or other
4 powers on behalf of one or more other planned communities or for the benefit of the unit
5 owners of one or more other planned communities, all provisions of sections 445.151 to
6 445.420 applicable to unit owners' associations apply to any such corporation or
7 unincorporated association, except as modified by this section.

8 2. Unless a master association is acting in the capacity of an association described
9 in section 445.301, it may exercise the powers set forth in subdivision (2) of subsection 1 of
10 section 445.302 only to the extent expressly permitted in the declarations of the planned
11 communities which are part of the master association or expressly described in the
12 delegations of power from those planned communities to the master association.

13 3. If the declaration of any planned community provides that the executive board
14 may delegate certain powers to a master association, the members of the executive board
15 have no liability for the acts or omissions of the master association with respect to those
16 powers following delegation.

17 4. The rights and responsibilities of unit owners with respect to the unit owners'
18 association set forth in sections 445.303, 445.308, 445.309, 445.310 and 445.312 apply in the
19 conduct of the affairs of a master association only to those persons who elect the board of
20 a master association, whether or not those persons are otherwise unit owners within the
21 meaning of sections 445.151 to 445.420.

22 5. Even if a master association is also an association described in section 445.301,
23 the certificate of incorporation or other instrument creating the master association and the
24 declaration of each planned community the powers of which are assigned by the
25 declaration or delegated to the master association may provide that the executive board of
26 the master association must be elected after the period of declarant control in any of the
27 following ways:

28 (1) All unit owners of all planned communities subject to the master association
29 may elect all members of the master association's executive board;

30 (2) All members of the executive boards of all planned communities subject to the
31 master association may elect all members of the master association's executive board;

32 (3) All unit owners of each planned community subject to the master association
33 may elect specified members of the master association's executive board;

34 (4) All members of the executive board of each planned community subject to the
35 master association may elect specified members of the master association's executive board.

445.221. 1. Any two or more planned communities, by agreement of the unit
2 owners as provided in subsection 2 of this section, may be merged or consolidated into a
3 single planned community. In the event of a merger or consolidation, unless the agreement
4 otherwise provides, the resultant planned community is, for all purposes, the legal
5 successor of all of the preexisting planned communities, and the operations and activities
6 of all associations of the preexisting planned communities shall be merged or consolidated
7 into a single association which shall hold all powers, rights, obligations, assets and
8 liabilities of all preexisting associations.

9 2. An agreement of two or more planned communities to merge or consolidate
10 under subsection 1 of this section shall be evidenced by an agreement prepared, executed,
11 recorded and certified by the president of the association of each of the preexisting planned
12 communities following approval by owners of units to which are allocated the percentage
13 of votes in each planned community required to terminate that planned community. Any
14 such agreement shall be recorded in every county in which a portion of the planned
15 community is located and is not effective until recorded.

16 3. Every merger or consolidation agreement shall provide for the reallocation of
17 the allocated interests in the new association among the units of the resultant planned
18 community either:

19 (1) By stating the reallocations or the formulas upon which they are based; or

20 (2) By stating the percentage of overall common expense liabilities and votes in the
21 new association which are allocated to all of the units comprising each of the preexisting
22 planned communities, and providing that the portion of the percentages allocated to each
23 unit formerly comprising a part of the preexisting planned community shall be equal to the
24 percentages of common expense liabilities and votes in the association allocated to that unit
25 by the declaration of the preexisting planned community.

445.222. If the right is originally reserved in the declaration, the declarant may, in
2 addition to any other development right, amend the declaration at any time during as
3 many years as are specified in the declaration to add additional real estate to the planned
4 community without describing the location of that real estate in the original declaration;
5 provided, that the amount of real estate added to the planned community under this section

6 may not exceed ten percent of the real estate described in subdivision (3) of subsection 1
7 of section 445.205, and provided further, that the declarant shall not in any event increase
8 the number of units in the planned community beyond the number stated in the original
9 declaration under subdivision (5) of subsection 1 of section 445.205.

445.223. 1. The declaration for a planned community may state that it is a master
2 planned community if the declarant has reserved the development right to create at least
3 five hundred units that may be used for residential purposes and, at the time of the
4 reservation, that declarant owns or controls more than five hundred acres on which the
5 units may be built.

6 2. If the requirements of subsection 1 of this section are satisfied, the declaration
7 for the master planned community need not state a maximum number of units and need
8 not contain any of the information required by subdivisions (3) to (14) of subsection 1 of
9 section 445.205 until the declaration is amended under subsection 3 of this section.

10 3. At the time each unit in a master planned community is conveyed to a purchaser,
11 the declaration shall contain:

12 (1) A sufficient legal description of the unit and all portions of the master planned
13 community in which any other units have been conveyed to a purchaser; and

14 (2) All the information required by subdivisions (3) to (14) of subsection 1 of section
15 445.205 with respect to that real estate.

16 4. Notwithstanding any other provision of the chapter:

17 (1) The only real estate in a master planned community which is subject to the
18 chapter are:

19 (a) Units that have been declared or which are being offered for sale; and

20 (b) Any other real estate described under subsection 3 of this section;

21 (2) Other real estate that is or may become part of the master planned community
22 is only subject to other law and to any other restrictions and limitations that appear of
23 record; and

24 (3) If the original sale certificate conspicuously identifies the fact that the
25 community is a master planned community, the disclosure requirements contained in
26 sections 445.401 to 445.407 apply only with respect to units that have been declared or are
27 being offered for sale in connection with the original sale certificate and to the real estate
28 described under subsection 3 of this section.

29 5. The limitations contained in section 445.222 do not apply to a master planned
30 community.

31 6. Subject to the requirements of good faith in section 445.163 and
32 unconscionability in section 445.162, the period of declarant control of the association for

33 a master planned community terminates in accordance with any conditions specified in the
34 declaration or otherwise at the time of the declarant, in a recorded instrument and after
35 giving written notice to all the unit owners, voluntarily surrenders all rights to control the
36 activities of the associations.

445.301. A unit owners' association shall be organized no later than the date the
2 first unit in the planned community is conveyed. The membership of the association at all
3 times shall consist exclusively of all the unit owners or, following termination of the
4 planned community, of all unit owners entitled to distributions of proceeds under section
5 445.218 or their heirs, successors or assigns. The association shall be organized as a profit
6 or nonprofit corporation.

445.302. 1. Except as provided in subsection 2 of this section, and subject to the
2 provisions of the declaration, the association may:

3 (1) Adopt and amend bylaws and rules and regulations for the planned community
4 and those who own or lease units within it;

5 (2) Adopt and amend budgets for revenues, expenditures and reserves and collect
6 assessments for common expenses from unit owners;

7 (3) Hire and discharge managing agents and other employees, agents and
8 independent contractors;

9 (4) Institute, defend or intervene in litigation or administrative proceedings in its
10 own name on behalf of itself or two or more unit owners on matters affecting the planned
11 community;

12 (5) Make contracts and incur liabilities;

13 (6) Regulate the use, maintenance, repair, replacement and modification of
14 common elements;

15 (7) Cause additional improvements to be made as a part of the common elements;

16 (8) Acquire, hold, encumber and convey in its own name any right, title or interest
17 to real or personal property, but common elements may be conveyed or subjected to a
18 security interest only under section 445.312;

19 (9) Grant easements, leases, licenses and concessions through or over the common
20 elements;

21 (10) Impose and receive any payments, fees or charges for the use, rental or
22 operation of the common elements, other than the limited common elements described in
23 subdivisions (2) and (4) of section 445.202, and for services provided to unit owners;

24 (11) Impose:

25 (a) Charges for late payment of assessments; and

26 (b) After notice and an opportunity to be heard, levy reasonable fines for violations
27 of the declaration, bylaws and rules and regulations of the association;

28 (12) Impose reasonable charges for the preparation and recordation of
29 amendments to the declaration, resale certificates required by section 445.409, or
30 statements of unpaid assessments;

31 (13) Provide for the indemnification of its officers and executive board and
32 maintain directors' and officers' liability insurance;

33 (14) Assign its right to future income, including the right to receive common
34 expense assessments, subject to the limitations expressly provided in the declaration;

35 (15) Exercise any other powers conferred by the declaration or bylaws;

36 (16) Exercise all other powers that may be exercised in this state by legal entities
37 of the same type as the association; and

38 (17) Exercise any other powers necessary and proper for the governance and
39 operation of the association.

40 2. The declaration shall not impose limitations on the power of the association to
41 deal with a declarant which are more restrictive than the limitations imposed on the power
42 of the association to deal with other persons.

43 3. The association may adopt rules with respect to units that may be used for
44 residential purposes to:

45 (1) By regulation, require that disputes between the executive board and unit
46 owners or between two or more unit owners regarding the planned community must be
47 submitted to nonbinding alternative dispute resolution in the manner described in the
48 regulations as a prerequisite to instituting a judicial proceeding;

49 (2) Prevent any use of, or behavior in, residential units which violates the
50 declaration or adversely affects the use and enjoyment of other units or the common
51 elements by other unit owners; or

52 (3) Reasonably restrict the leasing of residential units so long as the rules are
53 designed to meet the current underwriting requirements adopted by institutional lenders
54 who regularly lend money secured by first mortgages on units in common interest
55 communities or regularly purchase those mortgages. Otherwise, the association may not
56 regulate the use of, or behavior in, units unless empowered to do so by the declaration or
57 sections 445.151 to 445.420.

445.303. 1. Except as provided in the declaration, the bylaws, subsection 2 of this
2 section, or other provisions of sections 445.151 to 445.420, the executive board may act in
3 all instances on behalf of the association. In the performance of their duties, officers and
4 members of the executive board appointed by the declarant are required to exercise the

5 care required of a trustee for the unit owners. Otherwise, officers and members of the
6 executive board shall exercise reasonable care.

7 2. The executive board may not act on behalf of the association to amend the
8 declaration, to terminate the planned community, or to elect members of the executive
9 board or determine the qualifications, powers and duties, or terms of office of executive
10 board members, but the executive board may fill vacancies in its membership for the
11 unexpired portion of any term.

12 3. Within thirty days after adoption of any proposed budget for the planned
13 community, the executive board shall provide a summary of the budget to all the unit
14 owners, and shall set a date for a meeting of the unit owners to consider ratification of the
15 budget not less than fourteen nor more than thirty days after mailing of the summary.
16 Unless at that meeting a majority of all the unit owners or any larger vote specified in the
17 declaration reject the budget, the budget is ratified, whether or not a quorum is present.
18 In the event the proposed budget is rejected, the periodic budget last ratified by the unit
19 owners shall be continued until such time as the unit owners ratify a subsequent budget
20 proposed by the executive board.

21 4. Subject to subsection 5 of this section, the declaration may provide for a period
22 of declarant control of the association, during which period a declarant, or persons
23 designated by him, may appoint and remove the officers and members of the executive
24 board. Regardless of the period provided in the declaration, a period of declarant control
25 terminates no later than the earlier of:

26 (1) Sixty days after conveyance of seventy-five percent of the units which may be
27 created to unit owners other than a declarant;

28 (2) Two years after all declarants have ceased to offer units for sale in the ordinary
29 course of business; or

30 (3) Two years after any development right to add new units was last exercised.

31

32 A declarant may voluntarily surrender the right to appoint and remove officers and
33 members of the executive board before termination of that period, but in that event the
34 declarant may require, for the duration of the period of declarant control, that specified
35 actions of the association or executive board, as described in a recorded instrument
36 executed by the declarant, be approved by the declarant before they become effective.

37 5. Not later than sixty days after conveyance of twenty-five percent of the units
38 which may be created to unit owners other than a declarant, at least one member and not
39 less than twenty-five percent of the members of the executive board must be elected by unit
40 owners other than the declarant. Not later than sixty days after conveyance of fifty percent

41 of the units which may be created to unit owners other than a declarant, not less than
42 thirty-three and one-third percent of the members of the executive board shall be elected
43 by unit owners other than the declarant.

44 **6. Not later than the termination of any period of declarant control, the unit owners**
45 **shall elect an executive board of at least three members, at least a majority of whom shall**
46 **be unit owners. The executive board shall elect the officers. The executive board members**
47 **and officers shall take office upon election.**

48 **7. Notwithstanding any provision of the declaration or bylaws to the contrary, the**
49 **unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting**
50 **of the unit owners at which a quorum is present, may remove any member of the executive**
51 **board with or without cause, other than a member appointed by the declarant.**

52 **8. On or before the date of termination of declarant control, the declarant shall**
53 **relinquish control of the planned community and the unit owners shall accept control. At**
54 **the same time, the declarant shall deliver to the planned community all property, books,**
55 **accounts and articles of incorporation of the association and of the planned community**
56 **held or controlled by the declarant from the date the association was organized.**

445.304. 1. No special declarant right created or reserved under sections 445.151
2 **to 445.420 may be transferred except by an instrument evidencing the transfer recorded**
3 **in every county in which any portion of the planned community is located. The instrument**
4 **is not effective unless executed by the transferee.**

5 **2. Upon transfer of any special declarant right, the liability of a transferor**
6 **declarant is as follows:**

7 **(1) A transferor is not relieved of any obligation or liability arising before the**
8 **transfer, and remains liable for warranty obligations imposed by sections 445.151 to**
9 **445.420. Lack of privity does not deprive any unit owner of standing to maintain an action**
10 **to enforce any obligation of the transferor;**

11 **(2) If a successor to any special declarant right is an affiliate of a declarant, the**
12 **transferor is jointly and severally liable with the successor for any obligations or liabilities**
13 **of the successor relating to the planned community;**

14 **(3) If a transferor retains any special declarant rights, but transfers other special**
15 **declarant rights to a successor who is not an affiliate of the declarant, the transferor is**
16 **liable for any obligations or liabilities imposed on a declarant by sections 445.151 to**
17 **445.420 or by the declaration relating to the retained special declarant rights and arising**
18 **after the transfer;**

19 **(4) A transferor has no liability for any act or omission or any breach of a**
20 **contractual or warranty obligation arising from the exercise of a special declarant right by**
21 **a successor declarant who is not an affiliate of the transferor.**

22 **3. Unless otherwise provided in a mortgage instrument, deed of trust or other**
23 **agreement creating a security interest, in case of foreclosure of a security interest, sale by**
24 **a trustee under an agreement creating a security interest, tax sale, judicial sale or sale**
25 **under bankruptcy code or receivership proceedings, of any units owned by a declarant or**
26 **real estate in a planned community subject to development rights, a person acquiring title**
27 **to all the property being foreclosed or sold, but only upon such person's request, succeeds**
28 **to all special declarant rights related to that property held by that declarant, or only to any**
29 **rights reserved in the declaration under section 445.215 and held by that declarant to**
30 **maintain models, sales offices and signs. The judgment or instrument conveying title shall**
31 **provide for transfer of only the special declarant rights requested.**

32 **4. Upon foreclosure of a security interest, sale by a trustee under an agreement**
33 **creating a security interest, tax sale, judicial sale or sale under bankruptcy code or**
34 **receivership proceedings, of all interests in a planned community owned by a declarant:**

35 **(1) The declarant ceases to have any special declarant rights; and**

36 **(2) The period of declarant control terminates unless the judgment or instrument**
37 **conveying title provides for transfer of all special declarant rights held by that declarant**
38 **to a successor declarant.**

39 **5. The liabilities and obligations of a person who succeeds to special declarant**
40 **rights are as follows:**

41 **(1) A successor to any special declarant right who is an affiliate of a declarant is**
42 **subject to all obligations and liabilities imposed on the transferor by sections 445.151 to**
43 **445.420 or by the declaration;**

44 **(2) A successor to any special declarant right, other than a successor described in**
45 **subdivision (3) or (4) of this subsection, who is not an affiliate of a declarant, is subject to**
46 **all obligations and liabilities imposed by sections 445.151 to 445.420 or the declaration:**

47 **(a) On a declarant which relate to the successor's exercise or nonexercise of special**
48 **declarant rights; or**

49 **(b) On the declarant's transferor, other than:**

50 **a. Misrepresentations by any previous declarant;**

51 **b. Warranty obligations on improvements made by any previous declarant, or**
52 **made before the planned community was created;**

53 **c. Breach of any fiduciary obligation by any previous declarant or the previous**
54 **declarant's appointees to the executive board; or**

55 **d. Any liability or obligation imposed on the transferor as a result of the**
56 **transferor's acts or omissions after the transfer;**

57 **(3) A successor to only a right reserved in the declaration to maintain models, sales**
58 **offices and signs, may not exercise any other special declarant right, and is not subject to**
59 **any liability or obligation as a declarant, except the obligation to provide an original sale**
60 **certificate and any liability arising as a result thereof; and**

61 **(4) A successor to all special declarant rights held by the successor's transferor who**
62 **succeeded to those rights under a deed or other instrument of conveyance in lieu of**
63 **foreclosure or a judgment or instrument conveying title under subsection 3 of this section**
64 **may declare such successor's intention in a recorded instrument to hold those rights solely**
65 **for transfer to another person. Thereafter, until transferring all special declarant rights**
66 **to any person acquiring title to any unit or real estate subject to development rights owned**
67 **by the successor, or until recording an instrument permitting exercise of all those rights,**
68 **that successor may not exercise any of those rights other than any right held by the**
69 **successor's transferor to control the executive board in accordance with the provisions of**
70 **subsection 4 of section 445.303 for the duration of any period of declarant control, and any**
71 **attempted exercise of those rights is void. So long as a successor declarant shall not**
72 **exercise special declarant rights under this subsection, the successor declarant is not**
73 **subject to any liability or obligation as a declarant other than liability for the successor**
74 **declarant's acts and omissions under subsection 4 of section 445.303.**

75 **6. Nothing in this section subjects any successor to a special declarant right to any**
76 **claims against or other obligations of a transferor declarant, other than claims and**
77 **obligations arising under sections 445.151 to 445.420 or the declaration.**

445.305. Except for a planned community consisting exclusively of nonresidential
2 **units, if entered into before the executive board elected by the unit owners under**
3 **subsection 5 of section 445.303 takes office:**

4 **(1) Any management contract, employment contract or lease of recreational or**
5 **parking areas or facilities;**

6 **(2) Any other contract or lease between the association and a declarant or an**
7 **affiliate of a declarant; or**

8 **(3) Any contract or lease that is not bona fide or was unconscionable to the unit**
9 **owners at the time entered into under the circumstances then prevailing.**

10

11 **May be terminated without penalty by the association at any time after the executive board**
12 **elected by the unit owners under subsection 5 of section 445.303 takes office upon not less**
13 **than ninety days' notice to the other party. This section does not apply to any lease, the**

14 termination of which would terminate the planned community or reduce its size, unless the
15 real estate subject to that lease was included in the planned community for the purpose of
16 avoiding the right of the association to terminate a lease under this section.

445.306. 1. The bylaws of the association shall provide for:

2 (1) The number of members of the executive board and the titles of the officers of
3 the association;

4 (2) Election by the executive board of a president, treasurer, secretary and any
5 other officers of the association the bylaws specify;

6 (3) The qualifications, powers and duties, terms of office, and manner of electing
7 and removing executive board members and officers and filling vacancies;

8 (4) Which, if any, of its powers the executive board or officers may delegate to other
9 persons or to a managing agent;

10 (5) Which of its officers may prepare, execute, certify and record amendments to
11 the declaration on behalf of the association; and

12 (6) The method of amending the bylaws by vote or agreement of unit owners to
13 which at least a majority of the votes in the association are allocated.

14 2. Subject to the provisions of the declaration, the bylaws may provide for any
15 other matters the association deems necessary and appropriate.

445.307. 1. Except to the extent provided by the declaration, subsection 2 of this
2 **section, or subsection 8 of section 445.313, the association is responsible for maintenance,**
3 **repair and replacement of the common elements, and each unit owner is responsible for**
4 **maintenance, repair and replacement of the owner's unit. Each unit owner shall afford to**
5 **the association and the other unit owners, and to their agents or employees, access through**
6 **the owner's unit reasonably necessary for those purposes. If damage is inflicted on the**
7 **common elements, or on any unit through which access is taken, the unit owner responsible**
8 **for the damage, or the association if it is responsible, is liable for the prompt repair thereof.**

9 **2. In addition to the liability that a declarant has under sections 445.151 to 445.420**
10 **as a unit owner, the declarant alone is liable for all expenses in connection with real estate**
11 **subject to development rights. No other unit owner and no other portion of the planned**
12 **community is subject to a claim for payment of those expenses. Unless the declaration**
13 **provides otherwise, any income or proceeds from real estate subject to development rights**
14 **inures to the declarant. In the event all development rights have expired with respect to**
15 **any real estate, the declarant remains liable for all expenses of that real estate unless, upon**
16 **expiration, the declaration provides that such real estate becomes common elements or**
17 **units.**

445.308. A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by unit owners having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

445.309. 1. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

2. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

445.310. 1. If only one of the multiple owners of a unit is present at a meeting of the association, such multiple owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

2. Votes allocated to a unit may be cast under a proxy or mail ballot duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy or mail ballot. A unit owner shall not revoke a proxy or mail ballot given under this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

3. If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than unit owners of leased units:

19 (1) The provisions of subsections 1 and 2 of this section apply to lessees as if they
20 were unit owners;

21 (2) Unit owners who have leased their units to other persons may not cast votes on
22 those specified matters; and

23 (3) Lessees are entitled to notice of meetings, access to records, and other rights
24 respecting those matters as if they were unit owners. Unit owners shall also be given
25 notice, in the manner provided in section 445.308, of all meetings at which lessees may be
26 entitled to vote.

27 4. No votes allocated to a unit owned by an owner who is delinquent in the payment
28 of assessments shall be cast, and no such unit shall be counted for the purpose of
29 determining the presence of a quorum at any meeting of the association.

 445.311. 1. No unit owner is liable for an injury or damage arising out of the
2 condition or use of the common elements, except to the extent of such unit owner's
3 negligent act or omission. Neither the association nor any unit owner except the declarant
4 is liable for that declarant's torts in connection with any part of the planned community
5 which that declarant has the responsibility to maintain.

6 2. An action alleging a wrong done by the association, including an action arising
7 out of the conditions or use of the common elements, may be maintained against the
8 association and not against any unit owner. If the wrong occurred during any period of
9 declarant control and the association gives the declarant reasonable notice of and an
10 opportunity to defend against the action, the declarant who then controlled the association
11 is liable to the association or to any unit owner:

12 (1) For all tort losses not covered by insurance suffered by the association or that
13 unit owner; and

14 (2) For all costs which the association would not have incurred but for a breach of
15 contract or other wrongful act or omission.

16

17 Whenever the declarant is liable to the association under this section, the declarant is also
18 liable for all litigation expenses, including reasonable attorney's fees, incurred by the
19 association. Any statute of limitation affecting the association's right of action under this
20 section is tolled until the period of declarant control terminates. A unit owner is not
21 precluded from bringing an action contemplated by this section because the unit owner is
22 a unit owner or a member or officer of the association. Liens resulting from judgments
23 against the association are governed by section 445.317.

24 **3. A unit owner shall be liable for any claim, damage or judgment entered as a**
25 **result of the use or operation of the unit owner's unit, or caused by the unit owner's own**
26 **conduct.**

27 **4. Notwithstanding the provisions of subsection 1 of section 445.303, no member**
28 **of the executive board or officer of a planned community, who serves without**
29 **compensation other than reimbursement for actual expenses incurred, is liable to any**
30 **person including a unit owner for tort losses resulting from the exercise of judgment or**
31 **discretion in connection with governing or operating the planned interest community,**
32 **unless the act or omission involves conduct that is actually or deliberately intended to cause**
33 **harm or which shows an utter indifference to or conscious disregard for the safety of**
34 **others or their property.**

445.312. 1. Portions of the common elements may be conveyed or subjected to a
2 **security interest, and the nature of the use of portions of the common elements and**
3 **improvements thereon may be charged, by the association if persons entitled to cast at least**
4 **eighty percent of the votes in the association, including eighty percent of the votes allocated**
5 **to units not owned by a declarant, or any larger percentage the declaration specifies, agree**
6 **to that action; but all the owners of units to which any limited common element is allocated**
7 **must agree in order to convey that limited common element or subject it to a security**
8 **interest. The declaration may specify a smaller percentage only if all the units are**
9 **restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the**
10 **association, but the proceeds of the sale of limited common elements shall be distributed**
11 **equitably among the owners of units to which the limited common elements were allocated.**

12 **2. An agreement to convey common elements or subject them to a security interest**
13 **shall be evidenced by the execution of an agreement, or ratifications thereof, in the same**
14 **manner as a deed, by the requisite number of unit owners. The agreement shall specify a**
15 **date after which the agreement will be void unless recorded before that date. The**
16 **agreement and all ratifications thereof shall be recorded in every county in which a portion**
17 **of the planned community is situated, and is effective only upon recordation.**

18 **3. The association, on behalf of the unit owners, may contract to convey an interest**
19 **in a planned community under subsection 1 of this section, but the contract is not**
20 **enforceable against the association until approved under subsections 1 and 2 of this section.**
21 **Thereafter, the association has all powers necessary and appropriate to effect the**
22 **conveyance or encumbrance, including the power to execute deeds or other instruments.**

23 **4. Any purported conveyance, encumbrance, judicial sale or other involuntary**
24 **transfer of common elements, unless made under this section is void.**

25 **5. A conveyance or encumbrance of common elements under this section does not**
26 **deprive any unit of its rights of access and support.**

445.313. 1. Commencing not later than the time of the first conveyance of a unit
2 **to a person other than a declarant, the association shall maintain, to the extent reasonably**
3 **available:**

4 **(1) Property insurance on the common elements and on property which shall**
5 **become common elements, insuring against all risks of direct physical loss commonly**
6 **insured against, in the case of a conversion building, against fire and extended coverage**
7 **perils. The total amount of insurance after application of any deductibles shall be not less**
8 **than eighty percent of the actual cash value of the insured property at the time the**
9 **insurance is purchased and at each renewal date, exclusive of land, excavations,**
10 **foundations and other items normally excluded from property policies; and**

11 **(2) Commercial general liability insurance against claims and liabilities arising in**
12 **connection with the ownership, existence, use or management of the property an amount,**
13 **if any, specified by the planned community instruments or otherwise deemed sufficient in**
14 **the judgment of the executive board, insuring the executive board, the unit owners'**
15 **association, the management agent and their respective employees, agents and all persons**
16 **acting as agents. The declarant shall be included as an additional insured in the capacity**
17 **of unit owner and board member. The unit owners shall be included as additional insureds**
18 **but only for claims and liabilities arising in connection with the ownership, existence, use**
19 **or management of the common elements. The insurance shall cover claims of one or more**
20 **insured parties against other insured parties.**

21 **2. In the case of a building containing units having horizontal boundaries described**
22 **in the declaration, the insurance maintained under subdivision (1) of subsection 1 of this**
23 **section, to the extent reasonably available, shall include the units, but need not include**
24 **improvements and betterments installed by unit owners, but if they are covered, any**
25 **increased charge shall be assessed by the association to those owners.**

26 **3. If the insurance described in subsections 1 and 2 of this section is not reasonably**
27 **available, the association promptly shall cause notice of that fact to be hand-delivered or**
28 **sent prepaid by United States mail to all unit owners. The declaration may require the**
29 **association to carry any other insurance, and the association in any event may carry any**
30 **other insurance it deems appropriate to protect the association or the unit owners.**

31 **4. Insurance policies carried under subsections 1 and 2 of this section shall provide**
32 **that:**

33 **(1) Each unit owner is an insured person under the policy with respect to liability**
34 **arising out of the unit owner's interest in the common elements or membership in the**
35 **association;**

36 **(2) The insurer waives its right to subrogation under the policy against any unit**
37 **owner or member of the unit owner's household;**

38 **(3) No act or omission by any unit owner, unless acting within the scope of the unit**
39 **owner's authority on behalf of the association, will void the policy or be a condition to**
40 **recovery under the policy; and**

41 **(4) If, at the time of a loss under the policy, there is other insurance in the name of**
42 **a unit owner covering the same risk covered by the policy, the association's policy provides**
43 **primary insurance.**

44 **5. Any loss covered by the property policy under subdivision (1) of subsection 1 of**
45 **this section and under subsection 2 of this section shall be adjusted with the association,**
46 **but the insurance proceeds for that loss are payable to any insurance trustee designated**
47 **for that purpose, or otherwise to the association, and not to any holder of a security**
48 **interest. The insurance trustee or the association shall hold any insurance proceeds in**
49 **trust for the association unit owners and lienholders as their interests may appear. Subject**
50 **to the provisions of subsection 7 of this section, the proceeds shall be disbursed first for the**
51 **repair or restoration of the damaged property, and the association unit owners and lien**
52 **holders are not entitled to receive payment of any portion of the proceeds unless there is**
53 **a surplus of proceeds after the property has been completely repaired or restored, or the**
54 **planned community is terminated.**

55 **6. An insurance policy issued to the association does not prevent a unit owner from**
56 **obtaining insurance for the unit owner's own benefit.**

57 **7. An insurer that has issued an insurance policy under this section shall issue**
58 **certificates or memoranda of insurance to the association and, upon written request, to any**
59 **unit owner or holder of a security interest. The insurer issuing the policy shall not cancel**
60 **or refuse to renew it until thirty days after notice of the proposed cancellation or**
61 **nonrenewal has been mailed to the association, each unit owner and holder of a security**
62 **interest whom a certificate or memorandum of insurance have been issued at their**
63 **respective last known addresses.**

64 **8. Any portion of the planned community for which insurance is required under**
65 **this section which is damaged or destroyed shall be repaired or replaced promptly by the**
66 **association unless:**

67 **(1) The planned community is terminated, in which case section 445.210 applies;**

68 (2) Repair or replacement would be illegal under any state or local ordinance
69 governing health or safety; or

70 (3) Eighty percent of the unit owners, including every owner of a unit or assigned
71 limited common element which will not be rebuilt, vote not to rebuild.

72 9. The cost of repair or replacement in excess of insurance proceeds and reserves
73 is a common expense.

74 10. If the entire planned community is not repaired or replaced:

75 (1) The insurance proceeds attributable to the damaged common elements shall be
76 used to restore the damaged area to a condition compatible with the remainder of the
77 planned community;

78 (2) The insurance proceeds attributable to units and limited common elements
79 which are not rebuilt shall be distributed to the owners of those units and the owners of the
80 units to which those limited common elements were allocated, or to lienholders, as their
81 interests may appear; and

82 (3) The remainder of the proceeds shall be distributed to all the unit owners or
83 lienholders, as their interests may appear, in proportion to the common expense liabilities
84 of all the units.

85 11. If the unit owners vote not to rebuild any unit, that unit's allocated interests are
86 automatically reallocated upon the vote as if the unit had been condemned under
87 subsection 1 of section 445.157, and the association promptly shall prepare, execute and
88 record an amendment to the declaration reflecting the reallocations.

89 12. The provisions of this section may be varied or waived in the case of a planned
90 community all of whose units are restricted to nonresidential use.

 445.314. Unless otherwise provided in the declaration, any surplus funds of the
2 association remaining after payment of or provision for common expenses and any
3 prepayment of reserves shall be paid to the unit owners in proportion to their common
4 expense liabilities or credited to them to reduce their future common expense assessments.

 445.315. 1. Until the association makes a common expense assessment, the
2 declarant shall pay all common expenses. After any assessment has been made by the
3 association, assessments shall be made at least annually, based on a budget adopted at least
4 annually by the association.

5 2. Except for assessments under subsections 3 to 5 of this section, all common
6 expenses shall be assessed against all the units in accordance with the allocation set forth
7 in the declaration under subsection 1 of section 445.207. Any past due common expense
8 assessment or installment thereof bears interest at the rate established by the association
9 not exceeding eighteen percent per year.

10 **3. To the extent required by the declaration:**

11 **(1) Any common expense associated with the maintenance, repair or replacement**
12 **of a limited common element shall be assessed against the units to which that limited**
13 **common element is assigned, equally, or in any other proportion that the declaration**
14 **provides;**

15 **(2) Any common expense or portion thereof benefitting fewer than all of the units**
16 **shall be assessed exclusively against the units benefitted; and**

17 **(3) The costs of insurance shall be assessed in proportion to risk, and the costs of**
18 **utilities shall be assessed in proportion to usage.**

19 **4. Assessments to pay a judgment against the association may be made only against**
20 **the units in the planned community at the time the judgment was entered, in proportion**
21 **to their common expense liabilities.**

22 **5. If any common expense is caused by the misconduct of any unit owner, the**
23 **association may assess that expense exclusively against such unit owner's unit.**

24 **6. If common expense liabilities are reallocated, common expense assessments and**
25 **any installment thereof not yet due shall be recalculated in accordance with the reallocated**
26 **common expense liabilities.**

27 **7. The purchaser of a unit in a planned community at a judicial foreclosure sale,**
28 **or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by**
29 **foreclosure or otherwise takes possession under court order under chapter 443, RSMo,**
30 **shall have the duty to pay the unit owner's proportionate share of the common expenses**
31 **for the unit assessed from and after the first day of the month after the date of the judicial**
32 **foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in**
33 **foreclosure, or taking of possession under such court order.**

445.316. 1. The association has a statutory lien on a unit for any assessment levied
2 **against that unit for fines imposed against its unit owner from the time the assessment or**
3 **fine becomes due. The association's lien may be foreclosed in like manner as a mortgage**
4 **on real estate or a power of sale under chapter 443. Unless the declaration otherwise**
5 **provides, fees, charges, late charges, fines and interest charged under subdivisions (10) to**
6 **(12) of subsection 1 of section 445.302 are enforceable as assessments under this section.**
7 **If an assessment is payable in installments, the lien is for the full amount of the assessment**
8 **from the time the first installment thereof becomes due, together with such annual**
9 **assessments as may become payable in the future. No unit owner shall exempt such unit**
10 **owner from liability for payment of any assessment levied against the unit owner's unit by**
11 **waiver of the use or enjoyment of any of the common elements or facilities or by**
12 **abandonment of the unit or otherwise, and no unit owner shall be entitled to an offset,**

13 deduction or waiver of assessments or other charges levied and lawfully assessed by the
14 association.

15 **2. A lien under this section is prior to all other liens and encumbrances on a unit**
16 **except:**

17 **(1) Liens and encumbrances recorded before the recordation of the declaration;**

18 **(2) A first security interest or refinancing thereof on the unit recorded before the**
19 **date on which the assessment sought to be enforced became delinquent; and**

20 **(3) Liens for real estate taxes and other governmental assessments or charges**
21 **against the unit. This lien is also prior to a security interest described in subdivision (2)**
22 **of this subsection to the extent of the common expense assessments based on the periodic**
23 **budget adopted by the association under subsection 1 of section 445.315 which would have**
24 **to become due in the absence of acceleration during the six months immediately preceding**
25 **institution of an action to enforce the lien or collect the debt; provided that the association**
26 **shall not be entitled to this lien priority if it exercises its right to foreclose the lien as**
27 **provided in subsection 1 of this section. In addition to the lien priority of this subdivision,**
28 **the association shall be entitled to any costs and reasonable attorney's fees incurred in the**
29 **collection of the unpaid assessment provided by the association, when any portion of the**
30 **assessment or installment thereof has been delinquent for at least sixty days subsequent to**
31 **August 28, 2010, the association sends a notice by return receipt mail, stating the amount**
32 **of the delinquency, to the unit owner and the holder of a first security interest, provided**
33 **that such holder has informed the association of its name and mailing address; and at least**
34 **thirty days prior to initiating a proceeding to enforce the association's lien under**
35 **subsection 1 of this section, the association shall send a notice by return receipt mail,**
36 **stating its intention to file such action, to the holder of a first security interest, provided**
37 **that the holder has informed the association of its name and mailing address. This**
38 **subsection does not affect the priority of mechanic's or materialmen's liens, or the priority**
39 **of liens for other assessments made by the association. The lien under this section is not**
40 **subject to the provisions of section 513.475.**

41 **3. Unless the declaration otherwise provides, if two or more associations have liens**
42 **for assessments created at any time on the same real estate, those liens have equal priority.**

43 **4. Recording of the declaration constitutes record notice and perfection of the lien.**
44 **No further recordation of any claim of lien for assessment under this section is required.**

45 **5. A lien for unpaid assessments is extinguished unless proceedings to enforce the**
46 **lien are instituted within three years after the full amount of the assessments becomes due.**

47 **6. This section does not prohibit actions to recover sums for which subsection 1 of**
48 **this section creates a lien, or prohibit an association from taking a deed in lieu of**
49 **foreclosure.**

50 **7. A judgment or decree in any action brought under this section must include costs**
51 **and reasonable attorney's fees for the prevailing party.**

52 **8. The association upon written request shall furnish to a unit owner a recordable**
53 **statement setting forth the amount of unpaid assessments against such owner's unit. The**
54 **statement shall be furnished within ten business days after receipt of the request and is**
55 **binding on the association, the executive board and every unit owner.**

445.317. 1. Except as provided in subsection 2 of this section, a judgment for
2 **money against the association if recorded is not a lien on the common elements, but is a lien**
3 **in favor of the judgment lienholder against all of the units in the planned community at the**
4 **time the judgment was entered. No other property of a unit owner is subject to the claims**
5 **of creditors of the association.**

6 **2. If the association has granted a security interest in the common elements to a**
7 **creditor of the association under section 445.312, the holder of that security interest shall**
8 **exercise its right against the common elements before its judgment lien on any unit may**
9 **be enforced.**

10 **3. Whether perfected before or after the creation of the planned community, if a**
11 **lien other than a security interest, including a judgment lien or lien attributable to work**
12 **performed or materials supplied before creation of the planned community, becomes**
13 **effective against two or more units, the unit owner of an affected unit may pay to the**
14 **lienholder the amount of the lien attributable to the unit owner's unit, and the lienholder,**
15 **upon receipt of payment, promptly shall deliver a release of the lien covering that unit.**
16 **The amount of the payment shall be proportionate to the ratio which that unit owner's**
17 **common expense liability bears to the common expense liabilities of all unit owners whose**
18 **units are subject to the lien. After payment, the association may not assess or have a lien**
19 **against that unit owner's unit for any portion of the common expenses incurred in**
20 **connection with that lien.**

21 **4. A judgment against the association shall be indexed in the name of the planned**
22 **community and the association, and, when so indexed, is notice of the lien against the units.**

445.318. The association shall keep financial records sufficiently detailed to enable
2 **the association to comply with section 445.409. All financial and other records shall be**
3 **made reasonably available for examination by any unit owner and the unit owner's**
4 **authorized agents.**

1 **445.319.** With respect to a third person dealing with the association in the
2 association's capacity as a trustee, the existence of trust powers and their proper exercise
3 by the association may be assumed without inquiry. A third person is not bound to inquire
4 whether the association has power to act as trustee or is properly exercising trust powers.
5 A third person, without actual knowledge that the association is exceeding or improperly
6 exercising its powers, is fully protected in dealing with the association as if it possessed and
7 properly exercised the powers it purports to exercise. A third person is not bound to
8 assure the proper application of trust assets paid or delivered to the association in its
9 capacity as trustee.

445.401. 1. Sections 445.401 to 445.420 apply to all units subject to sections 445.151
2 to 445.420, except as provided in subsection 2 of this section or as modified or waived by
3 agreement of purchasers of units in a planned community in which all units are restricted
4 to nonresidential use.

2. Neither an original sale certificate nor a resale certificate need be prepared or
6 delivered in the case of:

- 7 (1) A gratuitous disposition of a unit;
- 8 (2) A disposition under court order;
- 9 (3) A disposition by a government or governmental agency;
- 10 (4) A disposition by foreclosure or deed in lieu of foreclosure;
- 11 (5) A disposition to a dealer;
- 12 (6) A disposition that may be canceled at any time and for any reason by the
13 purchaser without penalty; or
- 14 (7) A disposition of a unit restricted to nonresidential purposes.

445.402. 1. Except as provided in subsection 2 of this section, a declarant, prior to
2 the offering of any interest in a unit to the public, shall prepare an original sale certificate
3 conforming to the requirements of sections 445.403, 445.404, 445.405, and 445.406.

2. A declarant may transfer responsibility for preparation of all or a part of the
5 original sale certificate to a successor declarant or to a dealer. In the event of any such
6 transfer, the transferor shall provide the transferee with any information necessary to
7 enable the transferee to fulfill the requirements of subsection 1 of this section.

3. Any declarant or dealer who offers a unit to a purchaser shall deliver an original
9 sale certificate in the manner prescribed in section 445.408. The person who prepared all
10 or a part of the original sale certificate is liable under sections 445.408 and 445.417 for any
11 false or misleading statement set forth therein or for any omission of material fact
12 therefrom with respect to that portion of the original sale certificate which the declarant
13 prepared. If a declarant did not prepare any part of an original sale certificate that such

14 declarant delivers, such declarant is not liable for any false or misleading statement set
15 forth therein or for any omission of material fact therefrom unless such declarant had
16 actual knowledge of the statement or omission or, in the exercise of reasonable care, should
17 have known of the statement or omission.

18 **4. If a unit is part of two or more planned communities or is part of a planned**
19 **community and is part of any other real estate regime in connection with the sale of which**
20 **the delivery of an original sale certificate is required under the laws of this state, a single**
21 **original sale certificate conforming to the requirements of sections 445.403, 445.404,**
22 **445.405, and 445.406 as those requirements relate to each planned community in which the**
23 **unit is located, and to any other requirements imposed under the laws of this state, may be**
24 **prepared and delivered in lieu of providing two or more original sale certificates.**

445.403. 1. Except as provided in subsection 2 of this section, an original sale
2 **certificate shall contain and fully and accurately disclose:**

3 **(1) The names and principal addresses of the declarant and of the planned**
4 **community, and a statement that the community is a planned community;**

5 **(2) A general description of the planned community, including, to the extent**
6 **possible, the types, number, and declarant's schedule of commencement and completion**
7 **of construction of buildings and amenities that declarant anticipates including in the**
8 **planned community;**

9 **(3) The number of units in the planned community;**

10 **(4) Copies and a brief narrative description of the significant features of the**
11 **declaration, other than the plats and plans, and any other recorded covenants, conditions,**
12 **restrictions, and reservations affecting the planned community; the bylaws, and any rules**
13 **or regulations of the association; copies of any contracts and leases to be signed by**
14 **purchasers at closing; and a brief narrative description of any contracts or leases that will**
15 **or may be subject to cancellation by the association under section 445.305;**

16 **(5) Any current balance sheet and a projected budget for the association, including**
17 **reasonable reserves for repair and replacement, either within or as an exhibit to the**
18 **original sale certificate, for one year after the date of the first conveyance to a purchaser,**
19 **and thereafter the current budget of the association, a statement of who prepared the**
20 **budget, and a statement of the budget's assumptions concerning occupancy and inflation**
21 **factors. The budget shall include, without limitation:**

22 **(a) A statement of the amount, or a statement that there is no amount, included in**
23 **the budget as a reserve for repairs and replacement;**

24 **(b) A statement of any other reserves;**

- 25 (c) The projected common expense assessment by category of expenditures for the
26 association; and
- 27 (d) The projected monthly common expenses assessment for each type of unit;
- 28 (6) Any services, including but not limited to water or sewer district or utility
29 provider owned or controlled by declarant, and any private roadway that serves other
30 property in addition to the planned community, not reflected in the budget that the
31 declarant provides, or expenses that said declarant pays, and that said declarant expects
32 may become at any subsequent time a common expense of the association and the projected
33 common expense assessment attributable to each of those services or expenses for the
34 association and for each type of unit;
- 35 (7) Any initial or special fee due from the purchaser at closing, together with a
36 description of the purpose and method of calculating the fee;
- 37 (8) A description of any liens, defects, or encumbrances on or affecting the title to
38 the planned community including but not limited to subsurface rights to minerals, natural
39 gas storage, and other such rights;
- 40 (9) A description of any financing offered or arranged by the declarant;
- 41 (10) The terms and significant limitations of any warranties provided by the
42 declarant, including statutory warranties, and limitations on the enforcement thereof or
43 on damages;
- 44 (11) A statement that:
- 45 (a) Within ten days after receipt of an original sale certificate and before
46 conveyance, the seller may cancel any contract for purchase of a unit from a declarant;
- 47 (b) If a purchaser receives the original sale certificate more than ten days before
48 signing a contract, such purchaser cannot cancel the contract;
- 49 (12) A statement of any unsatisfied judgments or pending suits against the
50 association, and the status of any pending suits material to the planned community of
51 which a declarant has actual knowledge;
- 52 (13) A statement that any deposit made in connection with the purchase of a unit
53 will be held in escrow until closing and will be returned to the purchaser if the purchaser
54 cancels the contract under section 445.408, together with the name and address of the
55 escrow agent;
- 56 (14) Any restraints on alienation of any portion of the planned community;
- 57 (15) A description of the insurance coverage provided for the benefit of unit
58 owners;
- 59 (16) Any current or expected fees or charges to be paid by unit owners for the use
60 of any common elements and other facilities related to the planned community;

61 **(17) A list of all improvements contemplated in the planned community which the**
62 **declarant reserves the right not to build, and a list of all improvements contemplated in the**
63 **planned community which the declarant is obligated to build, as provided in sections**
64 **445.418 and 445.419;**

65 **(18) Any contingencies related to development or sales achievements of the planned**
66 **community contained in financial arrangements which declarant has obtained for all**
67 **improvements labeled "SHALL BE BUILT" under section 445.419, but incomplete at time**
68 **of the execution of the sale contract;**

69 **(19) A brief narrative description of any zoning and other land use requirements**
70 **affecting the planned community; and**

71 **(20) All unusual and material circumstances, features and characteristics of the**
72 **planned community and the units, including but not limited to natural features, view, any**
73 **additional charges or premiums for a particular unit, and any material fact relating to**
74 **adjacent property of which the declarant has or should have knowledge.**

75 **2. If a planned community composed of not more than twelve units is not subject**
76 **to any development rights, and no power is reserved to a declarant to make the planned**
77 **community part of a larger planned community, group of planned communities, or other**
78 **real estate, an original sale certificate may, but need not, include the information otherwise**
79 **required by subdivisions (9), (10), (15), (16), (17), (18), and (19) of subsection 1 of this**
80 **section, and the narrative descriptions of documents required by subdivision (4) of**
81 **subsection 1 of this section.**

82 **3. A declarant promptly shall amend the original sale certificate to report any**
83 **material change in the information required by this section.**

445.404. If the declaration provides that a planned community is subject to any
2 **development rights, the original sale certificate shall disclose, in addition to the information**
3 **required by section 445.403:**

4 **(1) The maximum number of units, the maximum number of units per acre, and**
5 **the estimated completion date, to the extent reasonably ascertainable, which may be**
6 **created;**

7 **(2) A statement of the extent of nonresidential use to which any real estate or unit**
8 **may be put, regardless of when added to the planned community;**

9 **(3) If any of the units that may be built within real estate subject to development**
10 **rights are not to be restricted exclusively to residential use, a statement, with respect to**
11 **each portion of that real estate, of the maximum percentage of the real estate areas, and**
12 **the maximum percentage of the floor areas of all units that may be created therein, that**
13 **are not restricted exclusively to residential use;**

14 **(4) A brief narrative description of any development rights reserved by a declarant**
15 **and of any conditions relating to or limitations upon the exercise of development rights,**
16 **including a description of improvements labeled "SHALL BE BUILT" and "NEED NOT**
17 **BE BUILT" as provided by the plat;**

18 **(5) A statement of the maximum extent to which each unit's allocated interests may**
19 **be changed by the exercise of any development right described in subdivision (3) of this**
20 **section;**

21 **(6) A statement of the extent to which any buildings or other improvements that**
22 **may be erected under any development right in any part of the planned community will**
23 **be compatible with existing buildings and improvements in the planned community in**
24 **terms of architectural style, quality of construction and size, or a statement that no**
25 **assurances are made in those regards;**

26 **(7) General descriptions of all other improvements that may be made and limited**
27 **common elements that may be created within any part of the planned community under**
28 **any development right reserved by the declarant, or a statement that no assurances are**
29 **made in that regard;**

30 **(8) A statement of any limitations as to the locations of any building or other**
31 **improvement that may be made within any part of the planned community under any**
32 **development right reserved by the declarant, or a statement that no assurances are made**
33 **in that regard;**

34 **(9) A statement that any limited common elements created under any development**
35 **right reserved by the declarant will be of the same general types and sizes as the limited**
36 **common elements within other parts of the planned community, or a statement of the types**
37 **and sizes planned, or a statement that no assurances are made in that regard;**

38 **(10) A statement that the proportion of limited common elements to units created**
39 **under any development right reserved by the declarant will be approximately equal to the**
40 **proportion existing within other parts of the planned community, or a statement of any**
41 **other assurances in that regard, or a statement that no assurances are made in that regard;**

42 **(11) A statement that all restrictions in the declaration affecting use, occupancy and**
43 **alienation of units will apply to any units created under any development right reserved**
44 **by the declarant, or a statement of any differentiations that may be made as to those units,**
45 **or a statement that no assurances are made in that regard; and**

46 **(12) A statement of the extent to which any assurances made under this section**
47 **apply or do not apply in the event that any development right is not exercised by the**
48 **declarant.**

445.405. If the declaration provides that ownership or occupancy of any units is or
2 may be in time shares, the original sale certificate shall disclose, in addition to the
3 information required by section 445.403:

- 4 (1) The number and identity of units in which time shares may be created;
- 5 (2) The total number of time shares that may be created;
- 6 (3) The minimum duration of any time shares which may be created; and
- 7 (4) The extent to which the creation of time shares will or may affect the
8 enforceability of the association's lien for assessments provided in section 445.316.

445.406. 1. The original sale certificate statement of a planned community
2 containing any conversion building shall contain, in addition to the information required
3 by section 445.403:

- 4 (1) A statement of work done, including the nature thereof, on the foundation,
5 structural members, roof, chimney, gutters and downspouts, exterior and interior walls,
6 ceilings, floors, windows, attic and wall insulation, including installer's statement of
7 present "R" value, sewers and stacks, plumbing system and related fixtures, electrical
8 system and related fixtures, and furnace and heating system, including the manufacturer's
9 energy efficiency ratio of any new heating or refrigeration equipment;
- 10 (2) A statement by the declarant of the expected useful life of each item reported
11 on in subdivision (1) of this subsection or a statement that no representations are made in
12 that regard; and a list of any outstanding notices of uncured violations of building code or
13 other municipal regulations.

14 2. This section applies only to buildings containing units that may be occupied for
15 residential use.

445.407. If an interest in a planned community is currently registered with the
2 United States Securities and Exchange Commission, a declarant satisfies all requirements
3 relating to the preparation of an original sale certificate of sections 445.151 to 445.420 if
4 such declarant delivers to the purchaser a copy of the original sale certificate filed with the
5 Securities and Exchange Commission. An interest in a planned community is not a
6 security under the provisions of the laws of this state.

445.408. 1. A person required to deliver an original sale certificate under
2 subsection 3 of section 445.402 shall provide a purchaser with the original sale certificate
3 and all amendments thereto before conveyance of that unit, and not later than the date of
4 any contract of sale. Unless a purchaser is given the original sale certificate more than ten
5 days before execution of a contract for the purchase of a unit, the purchaser, before
6 conveyance, may cancel the contract within ten days after first receiving the original sale
7 certificate.

8 **2. If a purchaser elects to cancel a contract under subsection 1 of this section, such**
9 **purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice**
10 **thereof by prepaid United States mail to the offeror or to the offeror's agent for service of**
11 **process. Cancellation is without penalty, and all payments made by the purchaser before**
12 **cancellation shall be refunded promptly.**

445.409. 1. Except in the case of a sale where delivery of an original sale certificate
2 **is required, or unless exempt under subsection 2 of section 445.401, a unit owner shall**
3 **furnish to a purchaser before the earlier of conveyance or transfer of the right to**
4 **possession of a unit, a resale certificate containing: a copy of the declaration, other than**
5 **the plats and plans, the bylaws, and the rules or regulations of the association. Such resale**
6 **certificate shall disclose:**

7 **(1) The effect on the proposed disposition of any right of first refusal or other**
8 **restraint on the free alienability of the unit held by the association, and any restriction on**
9 **the owner's right to use or occupy the unit or to lease the unit to another person;**

10 **(2) The amount of the periodic common expense assessment and any unpaid**
11 **common expense assessment or special assessment currently due and payable from the**
12 **selling unit owner;**

13 **(3) Any other fees payable by unit owners;**

14 **(4) Any capital expenditures approved by the association for the current and two**
15 **next succeeding fiscal years;**

16 **(5) The amount of any reserves for capital expenditures and of any portions of**
17 **those reserves designated by the association for any specified projects;**

18 **(6) The most recent regularly prepared balance sheet and income and expense**
19 **statement, if any, of the association;**

20 **(7) The current operating budget of the association;**

21 **(8) Any unsatisfied judgments against the association and the status of any pending**
22 **suits in which the association is a defendant;**

23 **(9) Any insurance coverage provided for the benefit of unit owners;**

24 **(10) Whether the executive board has given or received any written notice that any**
25 **uses, occupancies, alterations or improvements to the unit or to any limited common**
26 **elements assigned thereto violate any provision of the declaration;**

27 **(11) Whether the executive board has received written notice from a governmental**
28 **agency of any violation of environmental, health, or building codes with respect to the unit,**
29 **the limited common elements assigned thereto, or any other portion of the planned**
30 **community; and**

31 (12) The remaining term of any leasehold estate affecting the planned community
32 and the provisions governing any extension or renewal thereof.

33 2. The association, within ten days after a request by a unit owner, shall furnish a
34 resale certificate containing the information necessary to enable the unit owner to comply
35 with this section. A unit owner providing a certificate under subsection 1 of this section
36 is not liable to the purchaser for any erroneous information provided by the association
37 and included in the certificate.

38 3. A purchaser is not liable for any unpaid assessment or fee greater than the
39 amount set forth in the resale certificate prepared by the association. A unit owner is not
40 liable to a purchaser for the failure or delay of the association to provide the resale
41 certificate in a timely manner, but the purchase contract is voidable by the purchaser until
42 the certificate has been provided and for five days thereafter or until conveyance,
43 whichever first occurs.

 445.410. Any deposit made in connection with the purchase or reservation of a unit
2 from a person required to deliver an original sale certificate under subsection 3 of section
3 445.402 shall be placed in escrow and held either in this state or in the state where the unit
4 is located until refunded to purchaser under section 445.408 or the cancellation provided
5 therein expires.

 445.411. 1. In the case of a sale of a unit where delivery of an original sale
2 certificate is required under subsection 3 of section 445.402, a seller shall, before conveying
3 a unit, record or furnish to the purchaser, releases of all liens affecting that unit and any
4 limited common elements assigned thereto which the purchaser does not expressly agree
5 to take subject to or assume, or shall provide a surety bond or substitute collateral for or
6 insurance against the lien. This subsection does not apply to any real estate which a
7 declarant has the right to withdraw.

8 2. Before conveying real estate to the association, the declarant shall have that real
9 estate released from:

10 (1) All liens the foreclosure of which would deprive unit owners of the right of
11 access to or easement of support of their units; and

12 (2) All other liens on that real estate unless the original sale certificate describes
13 certain real estate which may be conveyed subject to liens in specified amounts.

 445.412. 1. A declarant of a planned community containing conversion buildings,
2 and any dealer who intends to offer units in such a planned community, shall give each of
3 the residential tenants and any residential subtenant in possession of a portion of a
4 conversion building notice of the conversion and provide those persons with the original
5 sale certificate no later than one hundred twenty days before the tenants and any subtenant

6 in possession are required to vacate. The notice shall set forth generally the rights of
7 tenants and subtenants under this section and shall be hand-delivered to the unit or mailed
8 by prepaid United States mail to the tenant and subtenant at the address of the unit or any
9 other mailing address provided by a tenant. No tenant or subtenant shall be required to
10 vacate upon less than one hundred twenty-days notice, except by reason of nonpayment
11 of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises,
12 and the terms of the tenancy shall not be altered during that period. Failure to give notice
13 as required by this section is a defense to an action for possession.

14 2. For sixty days after delivery or mailing of the notice described in subsection 1
15 of this section, the person required to give the notice shall offer to convey each unit or
16 proposed unit occupied for residential use to the tenant who leases that unit. If a tenant
17 fails to purchase the unit during that sixty-day period, the offeror shall not offer to dispose
18 of an interest in that unit during the following one hundred twenty days at a price or on
19 terms more favorable to the offeree than the price or terms offered to the tenant. This
20 subsection does not apply to any unit in a conversion building if that unit will be restricted
21 exclusively to nonresidential use or the boundaries of the converted unit do not
22 substantially conform to the dimensions of the residential unit before conversion.

23 3. If a seller, in violation of subsection 2 of this section, conveys a unit to a
24 purchaser for value who has no knowledge of the violation, recordation of the deed
25 conveying the unit extinguishes any right a tenant may have under subsection 2 of this
26 section to purchase that unit if the deed states that the seller has complied with subsection
27 2 of this section, but does not affect the right of a tenant to recover damages from the seller
28 for a violation of subsection 2 of this section.

29 4. If a notice of conversion specifies a date by which a unit or proposed unit must
30 be vacated, and otherwise complies with the provisions of sections 441.050 and 441.060,
31 RSMo, the notice also constitutes notice to vacate specified by that statute.

32 5. Nothing in this section permits termination of a lease by a declarant in violation
33 of its terms.

**445.413. 1. Express warranties made by any seller to a purchaser of a unit, if relied
2 upon by the purchaser, are created as follows:**

3 (1) Any affirmation of fact or promise which relates to the unit, its use or rights
4 appurtenant thereto, improvements that would directly benefit the unit or the right to use
5 or have the benefit of facilities not located in the planned community, creates an express
6 warranty that the unit and related rights and uses will conform to the affirmation or
7 promise;

8 (2) Any model or description of the physical characteristics of the planned
9 community, including plans and specifications of or for improvements, creates an express
10 warranty that the planned community will conform to the model or description;

11 (3) Any description of the quantity or extent of the real estate comprising the
12 planned community, including plats or surveys, creates an express warranty that the
13 planned community will conform to the description, subject to customary tolerances; and

14 (4) A provision that a purchaser may put a unit only to a specified use is an express
15 warranty that the specified use is lawful.

16 2. Neither formal words, such as "warranty" or "guarantee", nor a specific
17 intention to make a warranty, are necessary to create an express warranty of quality, but
18 a statement purporting to be merely an opinion or commendation of the real estate or its
19 value does not create a warranty.

20 3. Any conveyance of a unit transfers to the purchaser and all subsequent
21 purchasers all express warranties of quality made by previous sellers.

 445.414. 1. A declarant and dealer warrants that a unit will be in at least as good
2 condition at the earlier of the time of the conveyance or delivery of possession as it was at
3 the time of contracting, reasonable wear and tear excepted.

4 2. A declarant and a dealer impliedly warrants that a unit and the common
5 elements in the planned community are suitable for the ordinary uses of real estate of its
6 type and that any improvements made or contracted for by the declarant or dealer, or
7 made by any person before the creation of the planned community, will be:

8 (1) Free from defective materials; and

9 (2) Constructed in accordance with applicable law, according to sound engineering
10 and construction standards and in a workmanlike manner.

11 3. In addition, a declarant and a dealer warrants to a purchaser of a unit that may
12 be used for residential use that an existing use, continuation of which is contemplated by
13 the parties, does not violate applicable law at the earlier of the time of conveyance or
14 delivery of possession.

15 4. Warranties imposed by this section may be excluded or modified as specified in
16 section 445.415.

17 5. For purposes of this section, improvements made or contracted for by an affiliate
18 of a declarant are made or contracted for by the declarant.

19 6. Any conveyance of a unit transfers to the purchaser and subsequent purchasers
20 all of any declarant's implied warranties of quality.

 445.415. 1. Except as limited by subsection 2 of this section with respect to a
2 purchaser of a unit that may be used for residential use, implied warranties of quality:

3 (1) May be excluded or modified by agreement of the parties; and
4 (2) Are excluded by expression of disclaimer, such as "as is", "with all faults", or
5 other language which in common understanding calls the purchaser's attention to the
6 exclusion of warranties.

7 2. With respect to a purchaser of a unit that may be occupied for residential use,
8 no general disclaimer of implied warranties of quality of the unit or any of the common
9 elements is effective, but a declarant and a dealer may disclaim liability in an instrument
10 signed by the purchaser:

11 (1) For a specified defect or specified failure to comply with applicable law, if the
12 defect or failure entered into and became a part of the basis of the bargain; or

13 (2) For any defect in improvements which are otherwise covered by express
14 warranties.

445.416. 1. Unless the limitation period is tolled under section 445.417 or as
2 provided in subsection 4 of this section, a judicial proceeding for breach of any obligation
3 arising under section 445.413 or 445.414 shall be commenced within three years after the
4 cause of action accrues.

5 2. Subject to subsection 3 of this section, a cause of action for breach of warranty
6 of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

7 (1) As to a unit, at the time the purchaser to whom the warranty is first made enters
8 into possession if a possessory interest was conveyed or at the time of acceptance of the
9 instrument of conveyance if a nonpossessory interest was conveyed; and

10 (2) As to each common element, a judicial proceeding for breach of any obligation
11 to the association arising under section 445.413 or 445.414 shall be commenced within three
12 years after the cause of action accrues. Subject to subsections 3 and 4 of this section, a
13 cause of action of the association for breach of warranty of quality, as to each common
14 element, accrues at the time the common element is completed or, if later:

15 (a) As to a common element which is added to the planned community by exercise
16 of development rights, at the time the first unit therein is conveyed to a bona fide
17 purchaser; or

18 (b) As to a common element within any other portion of the planned community,
19 at the time the first unit in the planned community is conveyed to a purchaser.

20 3. If a warranty of quality explicitly extends to future performance or duration of
21 any improvement or component of the common elements, the cause of action accrues at the
22 time the breach is discovered or at the end of the period for which the warranty explicitly
23 extends, whichever is earlier.

24 **4. During the period of declarant control, the association may authorize an**
25 **independent committee of the executive board to evaluate and enforce by any lawful means**
26 **warranty claims involving the common elements and to compromise those claims. Only**
27 **members of the executive board elected by unit owners other than the declarant and other**
28 **persons appointed by those independent members may serve on the committee and the**
29 **committee's decision shall be free of any control by the declarant or any member of the**
30 **executive board or officer appointed by the declarant. All costs reasonably incurred by the**
31 **committee, including attorney's fees, are common expenses and shall be added to the**
32 **budget annually adopted by the association under section 445.315. If the committee is so**
33 **created, the limitation period for claims for these warranties begins to run from the date**
34 **of the first meeting of the committee, regardless of when declarant control terminates.**

445.417. 1. If a declarant or any other person subject to sections 445.151 to 445.420
2 **fails to comply with any provision hereof or any provision of the declaration or bylaws, any**
3 **person or class of persons adversely affected by the failure to comply has a claim for**
4 **appropriate relief. Punitive damages may be awarded for a willful, wanton, and malicious**
5 **failure to comply with sections 445.151 to 445.420. The court, in an appropriate case, may**
6 **award court costs and reasonable attorney's fees.**

7 **2. Parties to a dispute arising under sections 445.151 to 445.420, the declaration or**
8 **the bylaws may agree to resolve the dispute by any form of binding or nonbinding**
9 **alternative dispute resolution, but:**

10 **(1) A declarant may agree with the association to do so only after the period of**
11 **declarant control passes, unless the agreement is made with an independent committee of**
12 **the executive board under subsection 4 of section 445.416;**

13 **(2) An agreement to submit to binding arbitration shall be made in writing signed**
14 **by the parties; and**

15 **(3) Except as provided in subsection 4 of section 445.416, any statute of limitation**
16 **affecting any right of action of the association against a declarant under sections 445.151**
17 **to 445.420 is tolled until the period of declarant control terminates.**

445.418. If any improvement contemplated in a planned community is labeled
2 **"NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the**
3 **planned community with respect to which the declarant has reserved a development right,**
4 **no promotional material may be displayed or delivered to prospective purchasers which**
5 **describes or portrays that improvement unless the description or portrayal of the**
6 **improvement in the promotional material is conspicuously labeled or identified as "NEED**
7 **NOT BE BUILT".**

2 **445.419. 1. Except for improvements labeled "NEED NOT BE BUILT", the**
3 **declarant shall complete all improvements depicted on any site plan or other graphic**
4 **representation, including any plats or plans prepared under section 445.209, whether or**
5 **not that site plan or other graphic representation is contained in the original sale certificate**
6 **or in any promotional material distributed by or for the declarant.**

7 **2. The declarant is subject to liability for the prompt repair and restoration, to a**
8 **condition compatible with the remainder of the planned community, of any portion of the**
9 **planned community affected by the exercise of rights reserved under or created by section**
10 **445.210, 445.211, 445.212, 445.213, 445.215 or 445.216.**

11 **445.420. In the case of sale of a unit where delivery of an original sale certificate is**
12 **required, a contract of sale may be executed, but no interest in that unit may be conveyed**
13 **until the declaration is recorded and the unit is substantially completed, as evidenced by**
14 **a recorded certificate of substantial completion executed by an independent registered**
15 **architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by**
16 **law.**

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