FIRST REGULAR SESSION

HOUSE BILL NO. 987

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROWLAND (Sponsor), CROSS AND PHILLIPS (Co-sponsors).

1979L.02I D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 448, RSMo, by adding thereto twenty-three new sections relating to common interest owners bill of rights act.

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

Section A. Chapter 448, RSMo, is amended by adding thereto twenty-three new sections, to be known as sections 448.500, 448.505, 448.510, 448.515, 448.520, 448.525, 448.530, 448.535, 448.540, 448.545, 448.550, 448.555, 448.560, 448.565, 448.570, 448.575, 448.580, 448.585, 448.590, 448.595, 448.600, 448.605, and 448.615, to read as follows:

448.500. Sections 448.500 to 448.615 may be cited as the Common Interest Owners Bill of Rights Act.

448.505. In sections 448.500 to 448.615:

(1) "Assessment" means the sum attributable to each unit and due to the association pursuant to the budget adopted under section 448.595.

(2) "Association" means the unit owners association.

(3) "Bylaws" means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association, regardless of the form in which the association is organized, including any amendments to the instruments.

(4) "Common expense liability" means the liability for common expenses allocated to each unit.

(5) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated

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.

to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in that declaration. The term does not include an arrangement described in section 448.530. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest of less than twenty years in a unit, including renewal options.

(7) "Declarant" means a person or group of persons acting in concert that:

(A) as part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or

(B) reserves or succeeds to any declarant right.

(8) "Declaration" means the instrument, however denominated, that creates a common interest community, including any amendments to that instrument.

(9) "Executive board" means the body, regardless of name, designated in the declaration or bylaws which has power to act on behalf of the association.

(10) "Limited common element" means a portion of the common elements allocated for the exclusive use of one or more but fewer than all of the units.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. In the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee.

(12) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Residential purposes" means use for dwelling or recreational purposes, or both.

(14) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

(15) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy.

(16) "Unit owner" means a person that owns a unit.

448.510. Except as expressly provided in sections 448.500 to 448.615, the effect of its provisions may not be varied by agreement, and rights conferred by it may not be waived.

448.515. Every contract or duty governed by sections 448.500 to 448.615 imposes an obligation of good faith in its performance or enforcement.

448.520. Except as otherwise provided in sections 448.500 to 448.615, sections 448.500 to 448.615 apply to all condominiums in this state that may be used for residential purposes and to all other common interest communities that contain twelve or more units that may be used for residential purposes and are created within this state after the effective date of sections 448.500 to 448.615. Amendments to sections 448.500 to 448.615 apply to all common interest communities that contain twelve or more units that may be used for residential purposes and are created after the effective date of sections 448.500 to 448.615 or are subjected to sections 448.500 to 448.615 by amendment of their declaration, regardless of when the amendment to sections 448.500 to 448.615 is adopted in this state pursuant to the lesser of either the amendment requirements pursuant to subsections (c) to (k) of section 448.525 or the amendment requirements promulgated by the declaration of the common interest community.

448.525. (a) Sections 448.500 to 448.615 apply to all common interest communities that contain twelve or more units that may be used for residential purposes created in this state before the effective date of sections 448.500 to 448.615; but sections 448.500 to 448.615 apply only with respect to events and circumstances occurring after the effective date of sections 448.500 to 448.615 and does not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common interest communities.

(b) The declaration, bylaws, or plats and plans of any common interest community created before the effective date of sections 448.500 to 448.615 may be amended to achieve any result permitted by sections 448.500 to 448.615, regardless of what applicable law provided before the effective date of sections 448.500 to 448.615. Amendment of the declaration, bylaws, or plats and plans of any common interest community created before the effective date of sections 448.500 to 448.615 may be amended by the lesser of either the amendment requirements pursuant to subsections (c) to (k) of this section or the amendment requirement promulgated by the terms of the declaration, bylaws, or plats and plans of the common interest community.

(c) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection (c), the declaration, including the plats and maps, may be amended, including by the imposition of greater burdens, duties, obligations, and requirements, only by the signed written agreement of unit owners to which more than fifty percent of the votes in the association are allocated or any larger percentage, not to exceed sixty-seven percent, that the declaration specifies which said signed written agreement shall be recorded in the public records for the county or counties within which the common interest community is located. Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy, and until amended,

such provision shall be deemed to specify a percentage of sixty-seven percent. The declaration may specify a smaller percentage than a simple majority only if all of the units are restricted exclusively to nonresidential use. If the declaration of any common interest community does not specify a percentage for amendment, then it shall, by default utilize sixty-seven percent.

(2) if the declaration provides for an initial period of applicability to be followed by automatic extension periods, the declaration may be amended at any time in accordance with paragraph (1) of this subsection (c).

(3) this subsection shall not apply to:

(A) to the extent that its application is limited by subsection (g) of this section;

(B) to amendments executed by a declarant during which time the declarant retains control of the common interest community;

(C) to amendments executed by the circuit court for any county that includes all or any portion of a common interest community under subsection (k) of this section; or

(D) to amendments that affect phased communities or declarant-controlled communities.

(d) (1) If the declaration requires first mortgagees to approve or consent to amendments, but does not set forth a procedure for registration or notification of first mortgagees, the association may:

(A) send a dated, written notice and a copy of any proposed amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof; and

(B) cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the county or counties in which the common interest community is located.

(2) a first mortgagee that does not deliver to the association a negative response within sixty days after the date of the notice specified in paragraph (1) of this subsection (d) shall be deemed to have approved the proposed amendment.

(3) the notification procedure set forth in this subsection (d) is not mandatory. If the consent of first mortgagees is obtained without resort to this subsection (d), and otherwise in accordance with the declaration, the notice to first mortgagees shall be considered sufficient.

(e) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(f) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment must be indexed in the grantee's index in the name of the common interest community and the association and the grantor's index in the name of each person executing the amendment.

(g) (1) Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase the special declarant rights, increase the number of units, or change the boundaries of any unit or the allocated interests of a unit in the absence of an agreement of units owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, are allocated. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) the sixty-seven percent maximum percentage stated in paragraph (1) of subsection (c) of this section shall not apply to any common interest community in which one unit owner, by virtue of the declaration, bylaws, or other governing documents of the association, is allocated sixty-seven percent or more of the votes in the association.

(h) Except to the extent expressly permitted or required by other provisions of this article, no amendment may change the uses to which any unit is restricted in the absence of a vote or agreement of unit owners to which at least sixty-seven percent of the votes in the association are allocated. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(i) Amendments to the declaration required by this article to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(j) All expenses associated with preparing and recording an amendment to the declaration shall be the sole responsibility of:

(1) in the case of an amendment initiated by the membership of the association, by the unit owners desiring the amendment;

(2) in the case of an amendment initiated by the declarant; and

(3) in all other cases, by the association.

(k) (1) The association, acting through its executive board may:

(A) petition the circuit court for any county that includes all or any portion of the common interest community for an order amending the declaration of the common interest community if:

(i) the association has twice sent notice of the proposed amendment to all unit owners that are entitled by the declaration to vote on the proposed amendment or are required for approval of the proposed amendment by any means allowed pursuant to the provisions regarding notice to members in the Missouri Nonprofit Corporation Act;

(ii) the association has discussed the proposed amendment during at least one meeting of the association; and

(iii) unit owners of units to which are allocated more than fifty percent of the number of consents, approvals, or votes of the association that would be required to adopt the proposed amendment pursuant to the declaration have voted in favor of the proposed amendment.

(B) a petition filed pursuant to subparagraph (A) of this subsection (k)(1) shall include:

(i) a summary of:

a. the procedures and requirements for amending the declaration that are set forth in the declaration;

b. the proposed amendment to the declaration;

c. the effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;

d. the results of any vote taken with respect to the proposed amendment; and

e. any other matters that the association believes will be useful to the court in deciding whether to grant the petition; and

(ii) as exhibits, copies of:

a. the declaration as originally recorded and any recorded amendments to the declaration;

b. the text of the proposed amendment;

c. copies of any notices sent pursuant to subparagraph (1)(a)(i) of this subsection (k); and

d. any other documents that the association believes will be useful to the court in deciding whether to grant the petition.

(C) within three days of the filing of the petition, the circuit court shall set a date for hearing the petition. Unless the court finds that an emergency requires an immediate hearing, the hearing shall be held no later than forty-five days and no later than sixty days after the date the association filed the petition.

(D) no later than ten days after the date for hearing a petition is set pursuant to subparagraph (C) of this subsection (k), the association shall:

(i) send notice of the petition by any written means allowed pursuant to the provisions regarding notice to members in the Missouri Nonprofit Corporation Act, to any unit owner, by first class mail, postage prepaid or by hand delivery to any declarant (if still an owner of units within the common interest community), and by first class mail, postage prepaid, to any lender that holds a security interest in one or more units and is entitled by the declaration or any underwriting guidelines or requirements of that lender or of the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, or the government national mortgage corporation to vote on the proposed amendment. The notice shall include:

a. a copy of the petition which need not include the exhibits attached to the original petition filed with the circuit court;

b. the date the circuit court will hear the petition; and

c. a statement that the circuit court may grant the petition and order the proposed amendment to the declaration unless any declarant entitled by the declaration to vote on the proposed amendment, the federal housing administration, the veterans administration, more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment, or more than thirty-three percent of the lenders that hold a security interest in one or more units and are entitled by the declaration to vote on the proposed amendment file written objections to the proposed amendment with the court prior to the hearing;

(ii) file with the circuit court:

a. a list of the names and mailing addresses of the declarant (if entitled by the declaration to vote on the proposed amendment), unit owners, and lenders that hold a security interest in one or more units and that are entitled by the declaration to vote on the proposed amendment; and

b. a copy of the notice required by subparagraph (a)(1) of this subsection (k); and

(E) the circuit court shall grant the petition after hearing if it finds that:

(i) the association has complied with all requirements of this subsection;

(ii) no more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment, or if so entitled has not filed written objections to the proposed amendment with the court prior to the hearing;

(iii) neither the federal housing administration nor the veterans administration is entitled to approve the proposed amendment, or if so entitled has not filed written objections to the proposed amendment with the court prior to the hearing;

(iv) either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to the declarant or no declarant has filed written objections to the proposed amendment with the court prior to the hearing;

(v) either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to any lenders that hold security interests in one or more units and that are entitled by the declaration to vote on the proposed amendment or no more than thirty-three percent of such lenders have filed objections to the proposed amendment with the court prior to the hearing; and

(vi) the proposed amendment would neither terminate the declaration nor change the allocated interests of the units owners as specified in the declaration, except as may be allowed by other provisions of the Missouri Condominium Act.

(F) upon granting a petition, the circuit court shall enter an order approving the proposed amendment and requiring the association to record the amendment in each county that includes all or any portion of the common interest community. Once recorded, the amendment shall have the same legal effect as if it were adopted pursuant to any requirements set forth in the declaration.

448.530. (a) An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by sections 448.500 to 448.615.

(c) A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

448.535. (a) Regardless of the powers and duties of the association described in the declaration and bylaws, the association:

(1) shall adopt and may amend bylaws and may adopt and amend rules;

(2) shall adopt and may amend budgets;

(3) may require that disputes, except those related to the collection of assessments, charges, fines, and costs, between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution, including mediation or arbitration, as a prerequisite to commencement of a judicial proceeding;

(4) promptly shall provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association;

(5) shall establish a reasonable method for unit owners to communicate among themselves and with the executive board concerning the association;

(6) may suspend any right or privilege of a unit owner that fails to pay an assessment, but may not deny a unit owner or other occupant access to the owner's unit; and

(7) may exercise all other powers that may be exercised in this state by organizations of the same type as the association.

(b) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) the association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(c) The executive board's decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

448.540. (a) In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the executive board not

appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under chapter 355. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(b) An association shall have an executive board created in accordance with its declaration or bylaws. Except as otherwise provided in the declaration, the bylaws, subsection (c), or other provisions of sections 448.500 to 448.615, the executive board acts on behalf of the association.

(c) The executive board may not:

(1) amend the declaration except as provided by law or as outlined under sections 448.500 to 448.615;

(2) amend the bylaws;

(3) terminate the common interest community;

(4) elect members of the executive board, but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members; or

(5) determine the qualifications, powers, duties, or terms of office of executive board members.

448.545. (a) The bylaws of the association must:

(1) provide the number of members of the executive board and the titles of the officers of the association;

(2) provide for election by the executive board or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

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

(4) specify the powers the executive board or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(7) contain any provision necessary to satisfy requirements in sections 448.500 to 448.615 or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(8) provide for any matter required by law of this state other than sections 448.500 to 448.615 to appear in the bylaws of organizations of the same type as the association.

(b) Subject to the declaration and sections 448.500 to 448.615, the bylaws may provide for any other necessary or appropriate matters, including matters that could be adopted as rules.

448.550. (a) An association shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in accordance with the bylaws.

(b) An association shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the executive board, or unit owners having at least twenty percent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within thirty days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. Only matters described in the meeting notice required by subsection (c) may be considered at a special meeting.

(c) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than ten days or more than sixty days before the meeting date. Notice may be by any method reasonably calculated to provide notice to the person. The notice for any meeting must state the time, date, and place of the meeting and the items on the agenda, including:

(1) a statement of the general nature of any proposed amendment to the declaration or bylaws;

(2) any budget changes; and

(3) any proposal to remove an officer or member of the executive board.

(d) The minimum time to give notice required by subsection (c) may be reduced or waived for a meeting called to deal with an emergency.

(e) Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association.

(f) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with subsection (g) of section 448.555.

448.555. (a) Meetings of the executive board and committees of the association authorized to act for the association must be open to the unit owners except during executive sessions. The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote

or action may be taken during an executive session. An executive session may be held only to:

(1) consult with the association's attorney concerning legal matters;

(2) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(3) discuss labor or personnel matters;

(4) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(5) prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

(b) For purposes of this section, a gathering of board members at which the board members do not conduct association business is not a meeting of the executive board. The executive board and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

(c) During the period of declarant control, the executive board shall meet at least four times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community. After termination of the period of declarant control, all executive board meetings must be at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings.

(d) At each executive board meeting, the executive board shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association.

(e) Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each executive board meeting to each board member and to the unit owners. The notice must be given at least ten days before the meeting and must state the time, date, place, and agenda of the meeting.

(f) If any materials are distributed to the executive board before the meeting, the executive board at the same time shall make copies of those materials reasonably available to unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(g) Unless the declaration or bylaws otherwise provide, the executive board may meet by telephonic, video, or other conferencing process if:

(1) the meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(2) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d).

(h) After termination of any period when the declarant controls the association, unit owners may amend the bylaws to vary the procedures for meetings described in subsection (g).

(i) Instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all unit owners of any action taken by unanimous consent. After termination of the period of declarant control, the executive board may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the executive board.

(j) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than sixty days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

448.560. (a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if persons entitled to cast twenty percent of the votes in the association:

(1) are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots solicited in accordance with the association's procedures which have been delivered to the secretary in a timely manner; or

(3) are present by any combination of paragraphs (1) and (2).

(b) Unless the bylaws specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

(c) Except as otherwise provided in the bylaws, meetings of the association must be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.

448.565. (a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c), or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d).

(b) At a meeting of unit owners the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the 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 owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required by sections 448.500 to 448.615 or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least three days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) 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.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person may not cast undirected proxies representing more than fifteen percent of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than three days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(1) this section applies to lessees as if they were unit owners;

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters; and

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

448.570. (a) Regardless of provisions in the declaration, an association may not commence an action to foreclose a lien on a unit under this section unless:

(1) the unit owner, at the time the action is commenced, owes a sum equal to at least three months of common expense assessments based on the periodic budget last adopted by the association pursuant to section 448.595 or three billing periods of the common interest community and the unit owner has failed to accept or comply with a payment plan offered by the association; and

(2) the executive board votes to commence a foreclosure action specifically against that unit.

(b) Unless the parties otherwise agree, the association shall apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

(1) unpaid assessments;

(2) late charges;

(3) reasonable attorney's fees and costs and other reasonable collection charges; and

(4) all other unpaid fees, charges, penalties, interest, and late charges.

(c) If the only sums due with respect to a unit are fines and related sums imposed against the unit, a foreclosure action may not be commenced against the unit unless the association has a judgment against the unit owner with respect to the fines and related sums and has perfected a judgment lien against the unit under chapter 400, the Uniform Commercial Code.

(d) Every aspect of a foreclosure, sale, or other disposition under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable.

448.575. (a) The association must retain the following:

(1) detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2) minutes of all meetings of its unit owners and executive board other than executive sessions, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association;

(3) the names of unit owners in a form that permits preparation of a list of the names of all unit owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;

(4) its original or restated organizational documents, if required by law other than sections 448.500 to 448.615, bylaws and all amendments to them, and all rules currently in effect;

(5) all financial statements and tax returns of the association for the past three years;

(6) a list of the names and addresses of its current executive board members and officers;

(7) its most recent annual report delivered to the secretary of state, if any;

(8) financial and other records sufficiently detailed to enable the association to comply with other requirements of law;

(9) copies of current contracts to which it is a party;

(10) records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and

(11) ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b) Subject to subsections (c) and (d), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

(1) during reasonable business hours or at a mutually convenient time and location; and

(2) upon five days' notice in a record reasonably identifying the specific records of the association requested.

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

(1) personnel, salary, and medical records relating to specific individuals;

(2) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(3) existing or potential litigation or mediation, arbitration, or administrative proceedings;

(4) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;

(5) communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;

(6) information the disclosure of which would violate law other than sections 448.500 to 448.615;

(7) records of an executive session of the executive board; or

(8) individual unit files other than those of the requesting owner.

(d) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.

(e) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner.

(f) An association is not obligated to compile or synthesize information.

(g) Information provided pursuant to this section may not be used for commercial purposes.

448.580. (a) Before adopting, amending, or repealing any rule, the executive board shall give all unit owners notice of:

(1) its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(2) a date on which the executive board will act on the proposed rule or amendment after considering comments from unit owners.

(b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any new or revised rule.

(c) An association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures and fine structures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

(d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display on a unit or on a limited common element adjoining a unit of the flag of this state, or signs regarding candidates for public or association office or ballot questions, but the association may adopt rules governing the time, place, size, number, and manner of those displays.

(e) Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

(f) An association may adopt rules that affect the use of or behavior in units that may be used for residential purposes, only to:

(1) implement a provision of the declaration;

(2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners; or

(3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

(g) An association's internal business operating procedures need not be adopted as rules.

(h) Every rule must be reasonable.

448.585. (a) An association shall deliver any notice required to be given by the association under sections 448.500 to 448.615 to any mailing or electronic mail address a unit owner designates. Otherwise, the association may deliver notices by:

(1) hand delivery to each unit owner;

(2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(3) electronic means, if the unit owner has given the association an electronic address; or

(4) any other method reasonably calculated to provide notice to the unit owner.

(b) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

448.590. (a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, but:

(1) a member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;

(2) if a member may be elected or appointed pursuant to the declaration by persons other than the declarant or the unit owners, that member may be removed only by the person that elected or appointed that member; and

(3) the unit owners may not consider whether to remove a member of the executive board or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(b) At any meeting at which a vote to remove a member of the executive board or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

448.595. (a) The executive board, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than thirty days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than ten days or more than sixty days after providing the summary for a meeting of the unit owners to consider ratification of the budget. Unless at that meeting a majority of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

(b) The executive board, at any time, may propose a special assessment. Except as otherwise provided in subsection (c), the assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) and the unit owners do not reject the proposed assessment.

(c) If the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency:

(1) the special assessment shall become effective immediately in accordance with the terms of the vote;

(2) notice of the emergency assessment must be provided promptly to all unit owners; and

(3) the executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

448.600. (a) A declarant, association, unit owner, or any other person subject to sections 448.500 to 448.615 may bring an action to enforce a right granted or obligation imposed by sections 448.500 to 448.615, the declaration, or the bylaws. Punitive damages may be awarded for a willful failure to comply with sections 448.500 to 448.615. The court may award reasonable attorney's fees and costs.

(b) Parties to a dispute arising under sections 448.500 to 448.615, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) a declarant may agree with the association to do so only after the period of declarant control has expired; and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.

(c) The remedies provided by sections 448.500 to 448.615 shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential or special damages may not be awarded except as specifically provided in sections 448.500 to 448.615 or by other rule of law.

448.605. The principles of law and equity, including the law of corporations, any other form of organization authorized by the law of this state, and unincorporated associations, the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of sections 448.500 to 448.615 except to the extent inconsistent with sections 448.500 to 448.615. If there is a conflict between sections 448.500 to 448.615 and other law of this state, sections 448.500 to 448.615 prevail.

448.615. Sections 448.500 to 448.615 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

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