

# HOUSE BILL NO. 1105

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GATSCHENBERGER.

4161H.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 89, RSMo, by adding thereto one new section relating to planned communities.

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

Section A. Chapter 89, RSMo, is amended by adding thereto one new section, to be known as section 89.495, to read as follows:

**89.495. 1. The developer of any planned community as the declarant shall:**

**(1) Prepare and record a declaration of covenants, conditions and restrictions or similar instrument governing such planned community;**

**(2) Incorporate a Missouri non-profit corporation with a board of directors or executive board as the association with jurisdiction over such planned community as designated in the declaration; and**

**(3) Convey title to the common areas or common ground, if any, within such planned community to the association by warranty deed. The term “planned community” as used in this section shall refer to any newly developed and newly constructed single-family residential subdivision platted or created after the effective date of this section and does not include and shall not be construed to include any pre-existing residential subdivision, project, development, or community platted, existing, created or commenced prior to the effective date of this section.**

**2. Any declaration created after January 1, 2015 shall contain:**

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

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

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.

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

20           **(4) A list of each lot existing or contemplated within the planned community and the**  
21 **lot's identifying number, if known;**

22           **(5) A description, if known, of any common areas, common ground or any real**  
23 **property that was conveyed or shall be conveyed to the association;**

24           **(6) Unless otherwise provided in the declaration, an allocation of each lot's vote in**  
25 **the business affairs of the association and each lot's share of liability for the costs and**  
26 **expenses of the association as contemplated in the declaration, including, without**  
27 **limitation, any regular, periodic, annual or special assessments levied by the association;**

28           **(7) The formula, if any, used to establish allocations of interests;**

29           **(8) The insurance to be purchased and maintained by the association;**

30           **(9) The method of terminating the planned community;**

31           **(10) Any restrictions on alienation of lots, including leasing, and any design criteria**  
32 **or aesthetic standards; and**

33           **(11) Any other terms, covenants, restrictions and other provisions the declarant or**  
34 **the association considers appropriate to preserve or enhance the welfare of the planned**  
35 **community, including, without limitation, restrictions on use or the number or other**  
36 **qualifications of persons who may occupy lots, as well as any exemptions in favor of**  
37 **declarant or other special rights, powers and authority reserved or retained by declarant**  
38 **that declarant deems necessary or proper.**

39           **3. Any declaration may provide for a period of declarant control of the association,**  
40 **during which declarant may appoint and remove the officers, directors and members of**  
41 **the board of the association. Transition of control of the board of the association shall,**  
42 **unless otherwise provided in the declaration or by law, occur in phases as follows:**

43           **(1) One member of the board shall be elected by lot owners other than the declarant**  
44 **not later than sixty days after conveyance of fifty percent of the lots that may be created**  
45 **in the planned community to purchasers at retail for residential use and occupancy as**  
46 **opposed to successor lenders, investors, developers and builders of declarant that may**  
47 **acquire lots from a declarant;**

48           **(2) A majority of members of the board shall be elected by lot owners other than the**  
49 **declarant not later than one hundred eighty days after conveyance of ninety-five percent**  
50 **of the lots that may be created in the planned community to purchasers at retail for**  
51 **residential use and occupancy as opposed to successor lenders, investors, developers and**  
52 **builders of the declarant that may acquire lots from a declarant; and**

53           **(3) All members of the board shall be elected by lot owners other than the declarant**  
54 **not later than sixty days after conveyance of one hundred percent of the lots that may be**

55 created in the planned community to purchasers at retail for residential use and occupancy  
56 as opposed to successor lenders, investors, developers and builders of declarant that may  
57 acquire lots from a declarant.

58 4. Any declaration required to be recorded, or recorded for the purpose of  
59 compliance with provisions of this section, shall also provide:

60 (1) For an annual meeting of the association open to all lot owners and members of  
61 the association at a reasonable date, time and place;

62 (2) For special meetings of the association if five percent of the lot owners request  
63 such a meeting in writing;

64 (3) For notice of such annual or special meetings of the association to be not less  
65 than ten days (except in emergency) nor more than sixty days prior to the date of the  
66 meeting, such notice to be given by any method reasonably calculated to provide notice to  
67 all lot owners;

68 (4) That all meetings of the association and all records as required by sections  
69 355.271 and 355.826 shall be open to all lot owners and members of the association unless  
70 they relate to legal actions, cause of action, litigation or are otherwise protected by  
71 attorney-client privilege, personnel matters or work product, and that such association  
72 records be retained for three years unless a majority of lot owners authorize their  
73 destruction;

74 (5) That the association shall provide for the maintenance of the real estate owned  
75 by the association or otherwise controlled by the association;

76 (6) That the common areas and common ground be used for the benefit, use and  
77 enjoyment of the lot owners within the planned community present and future, and that  
78 except as may otherwise be reserved in the declaration no lot owner shall have the right to  
79 convey any interest in the common areas or common ground except as an incident of  
80 ownership of a lot; and

81 (7) For any other matter the declarant deems appropriate.

82 5. The term of the declaration shall be for the duration of the planned community.  
83 In the event the planned community is vacated, fee simple title to the real estate owned by  
84 the association, including, without limitation, any common area or common ground, shall  
85 vest in the then lot owners as tenants in common, which ownership shall be subject to the  
86 following restrictions together with any other restrictions as may be enumerated in the  
87 declaration:

88 (1) The rights of the tenants shall only be exercisable appurtenant to and in  
89 conjunction with their ownership of a lot;

90 (2) Any conveyance or change of ownership of a lot shall convey with it the  
91 ownership interest in the real estate, common area or common ground acquired; and

92           **(3) No ownership interest shall be conveyed by a lot owner except in conjunction**  
93 **with the sale of a lot. The sale of any lot shall carry with it all the incidents of ownership**  
94 **of the real estate, common areas or common ground acquired although such is not**  
95 **expressly mentioned in the deed to the lot; provided, however, that no right, power or**  
96 **authority conferred upon the association shall be abrogated.**

97           **6. Following the expiration or sooner termination of any period of declarant control,**  
98 **the board of an association formed for the purpose of managing, enforcing or governing**  
99 **a residential subdivision, project, development, or community created prior to the effective**  
100 **date of this act may, notwithstanding that the declaration of such subdivision, project,**  
101 **development, or community requires or provides for an unincorporated association or a**  
102 **board of trustees, incorporate such association under the provisions of chapter 355 if a**  
103 **majority of the owners of lots in such residential subdivision, project, development, or**  
104 **community give written approval for such conversion of the association to a corporation**  
105 **formed under chapter 355.**

106           **7. Except for any residential subdivision, project, development, or community**  
107 **created in this state before January 1, 2015 that is under the control of a declarant as**  
108 **provided in its declaration or other instrument, provisions of this section apply to all**  
109 **residential subdivisions, projects, developments, and communities created before January**  
110 **1, 2015.**

111           **(1) In the event an amendment to the declaration directly related to the safety of the**  
112 **planned community or to provide for the repair or maintenance of the common areas or**  
113 **improvements owned by the association did not receive the percentage of affirmative votes**  
114 **required under the declaration, but did receive at least a majority of votes in the**  
115 **association and less than thirty-three percent of the votes were cast to reject, the**  
116 **association, acting through its executive board, may petition the circuit court in any county**  
117 **that includes all or a portion of the planned community for an order amending the**  
118 **declaration of the planned community as set forth in the amendment that failed to receive**  
119 **the requisite vote for passage.**

120           **(a) The petition shall include a copy of the notices sent to the unit owners, describe**  
121 **each meeting held to discuss the proposed amendment, a summary of the existing**  
122 **procedures for amendments to the declaration, a copy of the proposed amendment, the**  
123 **reasons why the proposed amendment directly relates to the safety of the planned**  
124 **community or provides for the repair or maintenance of the common areas or**  
125 **improvements owned by the association, the reasons why the proposed amendment would**  
126 **be in the best interest of the planned community as a whole, a statement with respect to**  
127 **whether the rights of any mortgage lender would be affected, and a copy of notice to lot**  
128 **owners that the petition was filed.**

129           **(b) Within thirty days after the date of the association's notice that the petition was**  
130 **filed, any lot owners may file objections with the court.**

131           **(c) Within thirty days thereafter, at a hearing called for said purpose, the court shall**  
132 **grant the petition if the court finds, based upon the evidence, that the proposed amendment**  
133 **directly relates to the safety of the planned community or provides for the repair or**  
134 **maintenance of the common areas or improvements owned by the association unless more**  
135 **than one third of the lot owners timely file objections and the court determines that said**  
136 **objections state a reasonable basis.**

137           **(d) Upon granting a petition, the court shall enter an order approving the proposed**  
138 **amendment and requiring the association to record the amendment in each county that**  
139 **includes all or any portion of the planned community. Once recorded, the amendment shall**  
140 **have the same legal effects as if it was adopted pursuant to any requirements set forth in**  
141 **the declaration. Any order shall be subject to appellate proceeding.**

142           **(2) After transfer of control by the declarant, a unanimous vote of the lot owners**  
143 **is required to amend any term or provision in a declaration that creates or increases**  
144 **special declarant rights, or the requirement that lots shall be used solely for residential**  
145 **purposes for any planned community created after January 1, 2015. A unanimous vote of**  
146 **the lot owners is not required to add or delete a restriction affecting use of property**  
147 **provided such restriction does not make an existing restriction more burdensome or**  
148 **impose new restrictions upon any lot.**

149           **(3) Notwithstanding anything to the contrary in this section, the board of the**  
150 **association or a declarant during its period of control of the association or pursuant to any**  
151 **special exemption, right, power, or authority reserved or retained by the declarant in a**  
152 **declaration or other instrument, are authorized to amend a declaration or other instrument**  
153 **and the bylaws of the association to correct drafting or technical errors, or to bring the**  
154 **planned community into compliance with conditions imposed by any lenders providing**  
155 **government insured or guaranteed loans, or for any other permitted purpose or reason,**  
156 **without a vote by the lot owners. Lot owners shall be provided notice of any such**  
157 **amendment made pursuant to this subdivision.**

158           **(4) Except for any amendment ordered by a court under subdivision (1) of this**  
159 **subsection, no action to challenge the validity of an amendment to the declaration may be**  
160 **brought more than one year after the amendment to the declaration is recorded and notice**  
161 **is provided to the lot owners.**

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