

SECOND REGULAR SESSION

HOUSE BILL NO. 2626

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WEST.

5178H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 442, RSMo, by adding thereto one new section relating to the subdivision property owners' protection act.

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

Section A. Chapter 442, RSMo, is amended by adding thereto one new section, to be known as section 442.406, to read as follows:

442.406. 1. This section shall be known and may be cited as "The Subdivision Property Owners' Protection Act".

2. As used in this section, the following terms mean:

(2) "Board", the individuals appointed or elected to manage the affairs of an homeowners' association;

(3) "Homeowners' association", either:

(a) An association:

a. Of all the owners of real property within a geographic area defined by physical boundaries;

b. That is formally governed by a declaration of covenants, bylaws, or both;

c. That may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

d. That may enact or enforce rules concerning the operation of the community or subdivision;

(b) An association of all persons owning a unit in fee simple absolute individually; owning a unit as a co-owner in any real estate tenancy relationship; or, for purposes stated in the lease, a lessee of a unit; or

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 (c) The entity composed of multiple privately owned residential properties that
19 are recorded on plats as a single subdivision;

20 (4) "Management company", a person or entity that contracts with the
21 homeowners' association to perform any of the duties of the board;

22 (5) "Member", a person who belongs to a homeowners' association and whose
23 real property is subject to the jurisdiction of the homeowners' association;

24 (6) "Owners", the record owner, whether one or more persons or entities, of fee
25 simple title to any lot or unit that is part of the subdivision;

26 (7) "Person", one or more individuals or a legal or commercial entity;

27 (8) "Real property", property governed by a homeowners' association that is:

28 (a) Affixed to the land, including a manufactured home declared an
29 improvement to real property;

30 (b) Incidental or appurtenant to the land; and

31 (c) Immovable by law;

32 (9) "Types of use", the following lawful uses of real property:

33 (a) Use for residential, agricultural, or commercial purposes unless the use is
34 impermissible according to the written or recorded restrictions;

35 (b) The ability to rent the real property including, but not limited to, the land
36 and structures on the real property, for any amount of time; and

37 (c) The ability to otherwise develop the real property in accordance with
38 applicable federal, state, and local laws, ordinances, and regulations unless the ability is
39 impermissible according to the written or recorded restrictions.

40 3. (1) A homeowners' association shall not enter into, amend, or enforce a
41 covenant, condition, or restriction in a way that imposes more onerous restrictions on
42 the types of use of a member's real property than those restrictions that:

43 (a) Existed when the member acquired the member's interest in the real
44 property unless the member acquired the property through inheritance, in which case
45 the transfer of ownership shall not be considered a new acquisition by the member and
46 only the restrictions that applied to the member's predecessor shall apply to the
47 member; or

48 (b) The member who owns the affected real property expressly agrees to in
49 writing at the time of the adoption or amendment of the covenant, condition, or
50 restriction. If a member acquired the property through inheritance, the member shall
51 be subject to all restrictions agreed to by the member's predecessor.

52 (2) If a member claims the benefit under subdivision (1) of this subsection, the
53 member shall request that the homeowners' association record, or allow recording of,
54 the exception applicable to the member. Upon request by the member, the homeowners'

55 association, the member, or a designee shall record the member's exception with the
56 office of the county clerk and recorder of the county where the real property is located.
57 The member shall provide the homeowners' association with the date the real property
58 was conveyed to the member and shall pay the recording fees for the document setting
59 forth the exception.

60 4. A successor-in-interest to a member's real property may not claim the benefit
61 under subdivision (1) of subsection 3 of this section to the extent that the homeowners'
62 association entered into, amended, or enforced a covenant, condition, or restriction
63 before the successor-in-interest purchased the real property, even if the covenant,
64 condition, or restriction was not enforceable against the previous owner unless the
65 successor-in-interest is owned by or shares ownership with the previous member or
66 unless the successor-in-interest is a lender that acquired the real property through
67 foreclosure.

68 5. This section shall not apply to a covenant, condition, or restriction that is:

69 (1) Not subject to enforcement by a homeowners' association; or

70 (2) Required in order to comply with any applicable federal, state, or local law,
71 ordinance, or regulation.

72 6. Nothing in this section shall be construed to prevent the enforcement of a
73 covenant, condition, or restriction limiting the types of use of a member's real property
74 as long as the covenant, condition, or restriction applied to the real property at the time
75 the member acquired the member's interest in the real property or, if the member
76 acquired his or her interest through inheritance, at the time the member's predecessor
77 acquired his or her interest in the real property.

78 7. Nothing in this section shall invalidate existing covenants of a homeowners'
79 association or create a private right of action for actions or omissions occurring before
80 August 28, 2022. However, on and after August 28, 2022, unless the member has
81 consented under subdivision (1) of subsection 3 of this section, a homeowners'
82 association shall not enforce a covenant, condition, or restriction in such a way that
83 limits the types of use of a member's real property that were allowed when the member
84 acquired the affected real property.

85 8. Any contract with a management company shall include:

86 (1) A termination clause. If the initial term and any automatic renewal terms
87 collectively exceed four hundred days, the termination clause shall permit termination
88 without cause and with not more than thirty days' notice;

89 (2) A clause for keeping records. All records maintained by the management
90 company, including records from third parties and owners given to the management
91 company, shall:

92 (a) Be maintained for seven years;

93 (b) During the contract period, be open for inspection by any owners of the
94 subdivision upon reasonable notice and during regular business hours for fees not to
95 exceed the fees permitted by sunshine law requirements under chapter 610;

96 (c) Be turned over to the board or its designated agent within forty days of a
97 request by the board, including notice that the contract with the management company
98 is terminated; and

99 (d) Be kept in a manner to protect financial information of individual owners
100 except to the extent necessary for the purposes of maintenance and conducting
101 homeowners' association business.

102 9. Any contract with a management company may include:

103 (1) A clause to collect funds for the homeowners' association. If the contract
104 includes such a clause, the contract shall:

105 (a) Require the management company to deliver all moneys of the homeowners'
106 association, as well as a final accounting reflecting the financial status of the
107 homeowners' association as of the time of termination, within twenty days of the
108 termination; and

109 (b) Require the management company to maintain a bond no less than the
110 amount of yearly collections by the homeowners' association;

111 (2) A clause that the homeowners' association may indemnify the management
112 company. If the contract includes such a clause, the contract shall contain an identical
113 clause for the management company to indemnify the homeowners' association. The
114 indemnification clauses shall survive the termination of the management contract; or

115 (3) A clause requiring the homeowners' association to insure the management
116 company. If the contract includes such a clause, the contract shall contain an identical
117 clause for the management company to insure the homeowners' association.

118 10. No management company shall:

119 (1) Employ any member of any board under contract with the management
120 company during the term of a contract or for six months after a contract is terminated;

121 (2) Enter into a contract with any person who is a member of any board under
122 contract with the management company during the term of a contract;

123 (3) Enter into a contract with any company, person, or entity that is wholly or
124 partially owned by a member of any board under contract with the management
125 company during the term of the contract;

126 (4) Contract with third parties in the name of an homeowners' association unless
127 specifically approved by its board;

128 **(5) Contract with any company, person, or entity related to or affiliated with the**
129 **management company unless all terms of the relationship are disclosed to the board in**
130 **writing;**

131 **(6) Accept any consideration or payment from a third party to induce the**
132 **management company to use that third party's services or products; or**

133 **(7) Maintain a bank account with the funds of the homeowners' association**
134 **unless one or more board members have signature authority at all times.**

135 **11. (1) The board or any individual owner may initiate proceedings against a**
136 **management company to enforce this section.**

137 **(2) If the management company violates any provision of this section, the**
138 **management company shall reimburse the homeowners' association all funds paid by**
139 **the homeowners' association during the period of the violation.**

140 **(3) In any case involving a violation of this section, the court may, in its**
141 **discretion:**

142 **(a) Award punitive damages;**

143 **(b) Award attorney's fees to the plaintiff, based on the amount of time expended;**
144 **and**

145 **(c) Provide such equitable relief as the court deems necessary or proper to**
146 **protect the prevailing party from the methods, acts, or practices declared unlawful.**

147 **(4) The attorney general may initiate proceedings against a management**
148 **company relating to a knowing violation of this section. Such proceedings may include**
149 **an injunction, a civil penalty up to a maximum of five thousand dollars for each**
150 **knowing violation, not to exceed twenty-five thousand dollars per day, in any court of**
151 **competent jurisdiction. The attorney general may issue investigative demands, issue**
152 **subpoenas, administer oaths, and conduct hearings in the course of investigating a**
153 **violation of this section.**

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