

FIRST REGULAR SESSION

SENATE BILL NO. 589

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time February 26, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2388S.011

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
2 new sections, to be known as sections 445.151, 445.152, 445.153, 445.154,
3 445.155, 445.156, 445.157, 445.158, 445.159, 445.160, 445.161, 445.162, 445.163,
4 445.164, 445.201, 445.202, 445.203, 445.204, 445.205, 445.206, 445.207, 445.208,
5 445.209, 445.210, 445.211, 445.212, 445.213, 445.214, 445.215, 445.216, 445.217,
6 445.218, 445.219, 445.220, 445.221, 445.222, 445.223, 445.301, 445.302, 445.303,
7 445.304, 445.305, 445.306, 445.307, 445.308, 445.309, 445.310, 445.311, 445.312,
8 445.313, 445.314, 445.315, 445.316, 445.317, 445.318, 445.319, 445.401, 445.402,
9 445.403, 445.404, 445.405, 445.406, 445.407, 445.408, 445.409, 445.410, 445.411,
10 445.412, 445.413, 445.414, 445.415, 445.416, 445.417, 445.418, 445.419 and
11 445.420, to read as follows:

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

**445.152. 1. Sections 445.151 to 445.420 apply to all planned
2 communities created within this state after August 28, 2007; unless such
3 a planned community contains no more than twelve units, and is not
4 subject to any development rights.**

**5 2. Except as provided in subsection 3 of this section, sections
6 445.155, 445.156, 445.157, 445.203, 445.204, 445.221, subdivisions (1) to (6)
7 and (11) to (15) of subsection 1 of section 445.302, sections 445.311,
8 445.316, 445.318, 445.409 and 445.417, and section 445.153, to the extent
9 necessary in construing any of those sections, apply to all planned**

10 communities created in this state before August 28, 2007; but those
11 sections apply only with respect to events and circumstances occurring
12 after August 28, 2007, and do not invalidate existing provisions of the
13 declaration, bylaws or plats of those planned communities.

14 3. If a planned community created within this state before
15 August 28, 2007, contains no more than twelve units and is not subject
16 to any development rights, it is subject only to sections 445.155, 445.156
17 and 445.157 unless the declaration is amended in conformity with
18 applicable law and with the procedures and requirements of the
19 declaration to take advantage of the provisions of subsection 4 of this
20 section, in which case all the sections enumerated in subsection 2 of
21 this section apply to that planned community.

22 4. In the case of amendments to the declaration, bylaws and plats
23 of any planned community created before August 28, 2007:

24 (1) If the result accomplished by the amendment was permitted
25 by law prior to the adoption of sections 445.151 to 445.420, the
26 amendment may be made either in accordance with that law, in which
27 case that law applies to that amendment, or may be made under
28 sections 445.151 to 445.420;

29 (2) If the result accomplished by the amendment is permitted by
30 sections 445.151 to 445.420, and was not permitted by law prior to
31 sections 445.151 to 445.420, the amendment may be made under sections
32 445.151 to 445.420. An amendment to the declaration, bylaws or plats
33 authorized by this subsection to be made under sections 445.151 to
34 445.420 must be adopted in conformity with applicable law and with the
35 procedures and requirements specified by that amendment. If any such
36 amendment grants to any person any rights, powers or privileges
37 permitted by sections 445.151 to 445.420, all correlative obligations,
38 liabilities and restrictions in sections 445.151 to 445.420 also apply to
39 that person.

40 5. Sections 445.151 to 445.420 do not apply to a planned
41 community in which all units are restricted exclusively to
42 nonresidential use unless the declaration provides that the chapter
43 does apply to that planned community. Sections 445.151 to 445.420
44 apply to a planned community containing both units which are
45 restricted exclusively to nonresidential use, and other units which are
46 not so restricted, only if the declaration so provides or if the real estate

47 comprising the units which may be used for residential purposes would
48 be a planned community in the absence of the units which may not be
49 used for residential purposes.

50 6. Sections 445.151 to 445.420 do not apply to planned
51 communities or units located outside this state, but sections 445.402 to
52 445.408 apply to all contracts for the disposition thereof signed in this
53 state by any party.

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

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

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

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

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

30 (5) "Common expense liability", the liability for common expenses

31 allocated to each unit under section 445.207;

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

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

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

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

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

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

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

58 (13) "Development rights", any right or combination of rights
59 reserved by a declarant in the declaration (a) to add real estate to a
60 planned community; (b) to create units, common elements or limited
61 common elements within a planned community; (c) to subdivide units
62 or convert units into common elements; or (d) to withdraw real estate
63 from a planned community;

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

67 (15) "Executive board", the body, regardless of name, designated

68 in the declaration to act on behalf of the association;

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

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

75 (18) "Limited common element", a portion of the common
76 elements allocated by the declaration or by operation of subsection 2
77 or 4 of section 445.202 for the exclusive use of one or more but fewer
78 than all of the units;

79 (19) "Master association", an organization described in section
80 445.220, whether or not it is also an association described in section
81 445.301;

82 (20) "Offering", any advertisement, inducement, solicitation or
83 attempt to encourage any person to acquire any interest in a unit, other
84 than as security for an obligation. An advertisement in a newspaper or
85 other periodical of general circulation, or in any broadcast medium to
86 the general public, of a planned community not located in this state, is
87 not an offering if the advertisement states that an offering may be
88 made only in compliance with the law of the jurisdiction in which the
89 planned community is located;

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

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

104 (23) "Purchaser", any person, other than a declarant or a dealer,

105 who by means of a voluntary transfer acquires a legal or equitable
106 interest in a unit, other than (a) a leasehold interest, including renewal
107 options, of less than twenty years, or (b) as security for an obligation;

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

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

117 (26) "Security interest", an interest in real estate or personal
118 property, created by contract or conveyance, which secures payment
119 or performance of an obligation. The term includes a lien created by
120 a mortgage, deed of trust, trust deed, security deed, contract for deed,
121 land sales contract, lease intended as security, assignment of lease or
122 rents intended as security, pledge of an ownership interest in an
123 association and any other consensual lien or title retention contract
124 intended as security for an obligation;

125 (27) "Special declarant rights", rights reserved for the benefit of
126 a declarant (a) to complete improvements indicated on plats and plans
127 filed with the declaration; (b) to exercise any development right; (c) to
128 maintain sales offices, management offices, signs advertising the
129 planned community, and models; (d) to use easements through the
130 common elements for the purpose of making improvements within the
131 planned community or within real estate which may be added to the
132 planned community; (e) to make the planned community part of a
133 larger planned community or group of planned communities; (f) to
134 make the planned community subject to a master association; or (g) to
135 appoint or remove any officer or executive board member of the
136 association or any master association during any period of declarant
137 control. Special declarant rights are interests in real estate for all
138 purposes;

139 (28) "Time share", a right to occupy a unit or any of several units
140 during five or more separated time periods over a period of at least five
141 years, including renewal options, whether or not coupled with an estate

142 or interest in a planned community or a specified portion thereof;

143 (29) "Unit", a physical portion of the planned community
144 designated for separate ownership or occupancy, the boundaries of
145 which are described under subdivision (5) of subsection 1 of section
146 445.205;

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

445.154. Except as expressly provided in sections 445.151 to
2 445.420, provisions of sections 445.151 to 445.420 may not be varied by
3 agreement, and rights conferred by sections 445.151 to 445.420 may not
4 be waived. A declarant may not act under a power of attorney, or use
5 any other device, to evade the limitations or prohibitions of sections
6 445.151 to 445.420 or the declaration.

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

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

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

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

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

6 provision of any building code.

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

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

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

19 (1) That units allocated interests are reduced in proportion to
20 the reduction in the size of the unit, or on any other basis specified in
21 the declaration, and

22 (2) The portion of the allocated interests divested from the
23 partially acquired unit are automatically reallocated to that unit and
24 the remaining units in proportion to the respective allocated interests
25 of those units before the taking, with the partially acquired unit
26 participating in the reallocation on the basis of its reduced allocated
27 interests.

28 3. If part of the common elements is acquired by eminent
29 domain, the portion of the award attributable to the common elements

30 taken must be paid to the association. Any portion of the award
31 attributable to the acquisition of a limited common element must be
32 equally divided among the owners of the units to which that limited
33 common element was allocated at the time of acquisition.

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

445.158. The principles of law and equity, including the law of
2 corporations and unincorporated associations, the law of real property
3 and the law relative to capacity to contract, principal and agent,
4 eminent domain, estoppel, fraud, misrepresentation, duress, coercion,
5 mistake, receivership, substantial performance, or other validating or
6 invalidating cause supplement the provisions of sections 445.151 to
7 445.420, except to the extent inconsistent with sections 445.151 to
8 445.420.

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

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

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

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

7 2. Whenever it is claimed, or appears to the court, that a contract
8 or any contract clause is or may be unconscionable, the parties, in
9 order to aid the court in making the determination, shall be afforded

10 a reasonable opportunity to present evidence as to:

11 (1) The commercial setting of the negotiations;

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

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

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

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

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

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

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

445.201. A planned community may be created under sections
2 445.151 to 445.420 only by recording a declaration executed in the same
3 manner as a deed. The declaration must be recorded in every county
4 in which any portion of the planned community is located, and must be
5 indexed in the name of the planned community and the association and
6 in the name of each person executing the declaration.

445.202. Except as provided by the declaration:

2 (1) If walls, floors or ceilings of a unit are designated as the
3 boundaries of that unit, all lath, furring, wallboard, plasterboard,
4 plaster, paneling, tiles, wallpaper, paint, finished flooring and any
5 other materials constituting any part of the finished surfaces thereof
6 are a part of the unit, and all other portions of the walls, floors or
7 ceilings are a part of the common elements;

8 (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing
9 column, or any other fixture lies partially within and partially outside
10 the designated boundaries of a unit, any portion thereof serving only
11 that unit is a limited common element allocated solely to that unit, and
12 any portion thereof serving more than one unit or any portion of the
13 common elements is a part of the common elements;

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

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

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

3 2. The rule against perpetuities may not be applied to defeat any
4 provision of the declaration, bylaws, rules or regulations adopted under
5 subdivision (1) of subsection 1 of section 445.302.

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

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

445.204. A description of a unit which sets forth the name of the
2 planned community, the recording data for the declaration, the county
3 in which the planned community is located and the identifying number
4 of the unit is a sufficient legal description of that unit and all rights,

5 obligations and interests appurtenant to that unit which were created
6 by the declaration or bylaws.

445.205. 1. The declaration for a planned community must
2 contain:

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

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

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

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

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

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

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

21 (8) A description of any development rights and other special
22 declarant rights reserved by the declarant, together with a legally
23 sufficient description of the real estate to which each of those rights
24 applies and a time limit within which each of those rights must be
25 exercised;

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

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

33 (b) A statement as to whether, if any development right is
34 exercised in any portion of the real estate subject to that development
35 right, that development right must be exercised in all or in any other

36 portion of the remainder of that real estate;

37 (10) Any other conditions or limitations under which the rights
38 described in subdivision (8) of subsection 1 of this section may be
39 exercised or will lapse;

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

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

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

48 (14) All matters required by sections 445.206, 445.207, 445.208,
49 445.209, 445.215, 445.216, and subsection 4 of section 445.303.

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

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

5 (1) The recording data for the lease;

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

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

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

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

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

18 2. After the declaration for a leasehold planned community is
19 recorded, neither the lessor nor any successor in interest may
20 terminate the leasehold interest of a unit owner who makes timely
21 payment of such unit owner's share of the rent and otherwise complies

22 with all covenants which, if violated, would entitle the lessor to
23 terminate the lease. A unit owner's leasehold interest is not affected by
24 failure of any other person to pay rent or fulfill any other covenant.

25 3. Acquisition of the leasehold interest of any unit owner by the
26 owner of the reversion or remainder does not merge the leasehold and
27 fee simple interests unless the leasehold interests of all unit owners
28 subject to that reversion or remainder are acquired.

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

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

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

10 3. The declaration may provide:

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

13 (2) For cumulative voting only for the purpose of electing
14 members of the executive board; and

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

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

25 allocated interest prevails.

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

6 2. Except as the declaration otherwise provides, a limited
7 common element may be reallocated by an amendment to the
8 declaration executed by the unit owners between or among whose units
9 the reallocation is made. The persons executing the amendment shall
10 provide a copy thereof to the association, which shall record it. The
11 amendment shall be recorded in the names of the parties and the
12 planned community.

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

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

8 2. Each plat must show or project:

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

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

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

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

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

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

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

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

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

35 (10) The approximate location and dimensions of limited common
36 elements, including porches, balconies and patios, other than parking
37 spaces and the other limited common elements described in
38 subdivisions (2) and (4) of section 445.202; and

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

41 3. A plat may also show the intended location and dimensions of
42 any contemplated improvement to be constructed anywhere within the
43 planned community. Any contemplated improvement shown must be
44 labeled either "SHALL BE BUILT" or "NEED NOT BE BUILT".

45 4. Except as provided in subsection 7 of this section, to the
46 extent not shown or projected on the plats, plans of the units must
47 show or project:

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

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

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

56 5. Unless the declaration provides otherwise, the horizontal

57 boundaries of part of a unit located outside of a building have the same
58 elevation as the horizontal boundaries of the inside part, and need not
59 be depicted on the plats and plans.

60 6. Upon exercising any development right, the declarant shall
61 record either new plats and plans necessary to conform to the
62 requirements of subsections 1, 2, and 3 of this section, or new
63 certifications of plats and plans previously recorded if those plats and
64 plans conform to the requirements of those subsections.

65 7. Any certification of a plat required by this section must be
66 made by a registered and licensed surveyor, and any certification of a
67 plan required by subsection 2 of section 445.201 shall be made by an
68 architect or engineer.

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

71 (1) The plat shows the location and dimensions of all buildings
72 containing or comprising the units; and

73 (2) The declaration includes other information that shows or
74 contains a narrative description of the general layout of the units in
75 those buildings and the limited common elements allocated to those
76 units.

445.210. 1. To exercise any development right reserved under
2 subdivision (8) of subsection 1 of section 445.205, the declarant shall
3 prepare, execute and record an amendment to the declaration and
4 comply with section 445.209. The declarant is the owner of any units
5 thereby created. The amendment to the declaration must assign an
6 identifying number to each new unit created, and except in the case of
7 subdivision or conversion of units described in subsection 2 of this
8 section, reallocate the allocated interests among all units. The
9 amendment must describe any common elements and any limited
10 common elements thereby created and, in the case of limited common
11 elements, designate the units to which each is allocated to the extent
12 required by section 445.208.

13 2. Development rights may be reserved within any real estate
14 added to the planned community if the amendment adding that real
15 estate includes all matters required by section 445.205 or 445.206, as the
16 case may be, and the plats and plans include all matters required by
17 section 445.209. This provision does not extend the time limit on the

18 exercise of development rights imposed by the declaration under
19 subdivision (8) of subsection 1 of section 445.205.

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

23 (1) If the declarant converts the unit entirely to common
24 elements, the amendment to the declaration must reallocate all the
25 allocated interests of that unit among the other units as if that unit had
26 been taken by eminent domain;

27 (2) If the declarant subdivides the unit into two or more units,
28 whether or not any part of the unit is converted into common elements,
29 the amendment to the declaration must reallocate all the allocated
30 interests of the unit among the units created by the subdivision in any
31 reasonable manner prescribed by the declarant.

32 4. If the declaration provides, under subdivision (8) of subsection
33 1 of section 445.205, that all or a portion of the real estate is subject to
34 the development right of withdrawal:

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

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

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

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

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

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

14 community. Removal of partitions or creation of apertures under this
15 subdivision is not an alteration of boundaries.

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

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

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

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

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

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

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

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

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

7 2. Subject to the provisions of the declaration, a declarant has
8 an easement through the common elements as may be reasonably
9 necessary for the purpose of discharging a declarant's obligations or
10 exercising special declarant rights, whether arising under sections
11 445.151 to 445.420 or reserved in the declaration.

445.217. 1. Except in cases of amendments that may be executed
2 by a declarant under subsection 6 of section 445.209 or section 445.210;
3 or by the association under section 445.157, subsection 4 of section
4 445.206, subsection 3 of section 445.208, subsection 1 of section 445.212
5 or subsection 1 of section 445.213; or by certain unit owners under
6 subsection 2 of section 445.208, subsection 1 of section 445.212,
7 subsection 2 of section 445.213, or subsection 2 of section 445.218, and
8 except as limited by subsections 4, 5, 6, and 7 of this section, the
9 declaration, including the plats and plans, may be amended only by
10 vote or agreement of unit owners of units to which at least sixty-seven
11 percent of the votes in the association are allocated, or any larger
12 majority the declaration specifies. The declaration may specify a
13 smaller number only if all of the units are restricted exclusively to
14 nonresidential use.

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

18 3. Every amendment to the declaration must be recorded in

19 every county in which any portion of the planned community is located,
20 and is effective only upon recordation. Every amendment, except an
21 amendment under subsection 1 of section 445.212, shall be indexed in
22 the name of the planned community and the association and in the
23 name of the parties executing the amendment.

24 4. Except to the extent expressly permitted or required by other
25 provisions of sections 445.151 to 445.420, no amendment may create or
26 increase the special declarant rights, increase the number of units or
27 change the boundaries of any unit or the allocated interests of a unit
28 in the absence of unanimous consent of the unit owners.

29 5. An amendment to the declaration may be adopted that
30 prohibits or materially restricts the permitted uses of, or behavior in,
31 a unit or the number or other qualifications, of persons who may
32 occupy units, by vote or agreement of unit owners to which eighty
33 percent of the votes in the association are allocated; provided however,
34 that the amendment must provide reasonable protection for a valid use
35 or occupancy existing at the time the amendment was adopted.

36 6. The time limits specified in the declaration under subdivision
37 (8) of subsection 1 of section 445.205 within which reserved
38 development rights must be exercised may be extended, and additional
39 development rights may be created, if persons entitled to cast at least
40 eighty percent of the votes in the association, including eighty percent
41 of the votes allocated to units not owned by the declarant, agree to that
42 action. The agreement is effective thirty days after an amendment to
43 the declaration reflecting the terms of the agreement is recorded,
44 unless all persons holding the affected special declarant rights or
45 security interests in those rights:

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

48 (2) Consent in writing at the time the amendment is recorded, in
49 which case the amendment is effective when recorded.

50 7. Amendments to the declaration required by sections 445.151
51 to 445.420 to be recorded by the association shall be prepared,
52 executed, recorded and certified on behalf of the association by any
53 officer of the association designated for that purpose or, in the absence
54 of designation, by the president of the association.

445.218. 1. Except in the case of a taking of all the units by

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

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

16 3. In the case of a planned community containing only units
17 having horizontal boundaries described in the declaration, a
18 termination agreement may provide that all the common elements and
19 units of the planned community shall be sold following termination. If,
20 under the agreement, any real estate in the planned community is to be
21 sold following termination, the termination agreement must set forth
22 the minimum terms of the sale.

23 4. In the case of a planned community containing any units not
24 having horizontal boundaries described in the declaration, a
25 termination agreement may provide for sale of the common elements,
26 but may not require that the units be sold following termination, unless
27 the declaration as originally recorded provided otherwise or unless all
28 the unit owners consent to the sale.

29 5. The association, on behalf of the unit owners, may contract for
30 the sale of real estate in the planned community, but the contract is not
31 binding until approved under subsections 1 and 2 of this section. If any
32 real estate in the planned community is to be sold following
33 termination, title to that real estate, upon termination, vests in the
34 association as trustee for the holders of all interests in the
35 units. Thereafter, the association has all powers necessary and
36 appropriate to effect the sale. Until the sale has been concluded and
37 the proceeds thereof distributed, the association continues in existence
38 with all powers it had before termination. Proceeds of the sale must be

39 distributed to unit owners and lien holders as their interests may
40 appear, in proportion to the respective interests of unit owners as
41 provided in subsection 8 of this section. Unless otherwise specified in
42 the termination agreement, as long as the association holds title to the
43 real estate, each unit owner and any successors in interest have an
44 exclusive right to occupancy of the portion of the real estate that
45 formerly constituted such owner's unit. During the period of that
46 occupancy, each unit owner and any successors in interest remain
47 liable for all assessments and other obligations imposed on unit owners
48 by sections 445.151 to 445.420 or the declaration.

49 6. If the real estate constituting the planned community is not to
50 be sold following termination, title to the common elements and, in a
51 planned community containing only units having horizontal boundaries
52 described in the declaration, title to all the real estate in the planned
53 community, vests in the unit owners upon termination as tenants in
54 common in proportion to their respective interests as provided in
55 subsection 8 of this section, and liens on the units shift
56 accordingly. While the tenancy in common exists, each unit owner and
57 any successors in interest have an exclusive right to occupancy of the
58 portion of the real estate that formerly constituted said owner's unit.

59 7. Following termination of the planned community, the proceeds
60 of any sale of real estate, together with the assets of the association,
61 are held by the association as trustee for unit owners and holders of
62 liens on the units as their interests may appear. Following termination,
63 creditors of the association holding liens on the units which were
64 recorded before termination may enforce those liens in the same
65 manner as any lien holder. All other creditors of the association are to
66 be treated as if they had perfected liens on the units immediately
67 before termination.

68 8. The respective interests of unit owners referred to in
69 subsections 5, 6 and 7 of this section are as follows:

70 (1) Except as provided in subdivision (2) of this subsection, the
71 respective interests of unit owners are the fair market values of their
72 units and limited common elements immediately before the
73 termination, as determined by one or more independent appraisers
74 selected by the association. The decision of the independent appraisers
75 shall be distributed to the unit owners and becomes final unless

76 disapproved within thirty days after distribution by unit owners of
77 units to which twenty-five percent of the votes in the association are
78 allocated. The proportion of any unit owner's interest to that of all unit
79 owners is determined by dividing the fair market value of that unit
80 owner's unit by the total fair market values of all the units and common
81 elements;

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

87 9. Except as provided in subsection 10 of this section, foreclosure
88 or enforcement of a lien or encumbrance against the entire planned
89 community does not of itself terminate the planned community, and
90 foreclosure or enforcement of a lien or encumbrance against a portion
91 of the planned community does not of itself withdraw that portion from
92 the planned community. Foreclosure or enforcement of a lien or
93 encumbrance against withdrawable real estate does not of itself
94 withdraw that real estate from the planned community, but the person
95 taking title thereto has the right to require from the association, upon
96 request, an amendment excluding the real estate from the planned
97 community.

98 10. If a lien or encumbrance against a portion of the real estate
99 comprising the planned community has priority over the declaration,
100 and the lien or encumbrance has not been partially released, the
101 parties foreclosing the lien or encumbrance may upon foreclosure,
102 record an instrument excluding the real estate subject to that lien or
103 encumbrance from the planned community.

445.219. The declaration may require that all or a specified
2 number or percentage of the mortgagees or beneficiaries of deeds of
3 trust encumbering the units approve specified actions of the unit
4 owners or the association as a condition to the effectiveness of those
5 actions, but no requirement for approval may operate to:

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

8 (2) Prevent the association or the executive board from
9 commencing, intervening in, or settling any litigation or proceeding, or

10 receiving and distributing any insurance proceeds except under section
11 445.313.

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

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

17 3. If the declaration of any planned community provides that the
18 executive board may delegate certain powers to a master association,
19 the members of the executive board have no liability for the acts or
20 omissions of the master association with respect to those powers
21 following delegation.

22 4. The rights and responsibilities of unit owners with respect to
23 the unit owners' association set forth in sections 445.303, 445.308,
24 445.309, 445.310 and 445.312 apply in the conduct of the affairs of a
25 master association only to those persons who elect the board of a
26 master association, whether or not those persons are otherwise unit
27 owners within the meaning of sections 445.151 to 445.420.

28 5. Even if a master association is also an association described
29 in section 445.301, the certificate of incorporation or other instrument
30 creating the master association and the declaration of each planned
31 community the powers of which are assigned by the declaration or
32 delegated to the master association may provide that the executive
33 board of the master association must be elected after the period of
34 declarant control in any of the following ways:

35 (1) All unit owners of all planned communities subject to the

36 master association may elect all members of the master association's
37 executive board;

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

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

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

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

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

20 3. Every merger or consolidation agreement must provide for the
21 reallocation of the allocated interests in the new association among the
22 units of the resultant planned community either:

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

25 (2) By stating the percentage of overall common expense
26 liabilities and votes in the new association which are allocated to all of

27 the units comprising each of the preexisting planned communities, and
28 providing that the portion of the percentages allocated to each unit
29 formerly comprising a part of the preexisting planned community must
30 be equal to the percentages of common expense liabilities and votes in
31 the association allocated to that unit by the declaration of the
32 preexisting planned community.

445.222. If the right is originally reserved in the declaration, the
2 declarant may, in addition to any other development right, amend the
3 declaration at any time during as many years as are specified in the
4 declaration to add additional real estate to the planned community
5 without describing the location of that real estate in the original
6 declaration; provided, that the amount of real estate added to the
7 planned community under this section may not exceed ten percent of
8 the real estate described in subdivision (3) of subsection 1 of section
9 445.205, and provided further, that the declarant may not in any event
10 increase the number of units in the planned community beyond the
11 number stated in the original declaration under subdivision (5) of
12 subsection 1 of section 445.205.

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

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

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

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

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

19 4. Notwithstanding any other provision of the chapter:

20 (1) The only real estate in a master planned community which is
21 subject to the chapter is:

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

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

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

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

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

37 6. Subject to the requirements of good faith in section 445.163
38 and unconscionability in section 445.162, the period of declarant
39 control of the association for a master planned community terminates
40 in accordance with any conditions specified in the declaration or
41 otherwise at the time of the declarant, in a recorded instrument and
42 after giving written notice to all the unit owners, voluntarily
43 surrenders all rights to control the activities of the associations.

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

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

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

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

7 owners;

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

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

13 (5) Make contracts and incur liabilities;

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

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

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

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

24 (10) Impose and receive any payments, fees or charges for the
25 use, rental or operation of the common elements, other than the limited
26 common elements described in subdivisions (2) and (4) of section
27 445.202, and for services provided to unit owners;

28 (11) Impose:

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

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

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

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

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

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

43 (16) Exercise all other powers that may be exercised in this state

44 by legal entities of the same type as the association; and

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

47 2. The declaration may not impose limitations on the power of
48 the association to deal with a declarant which are more restrictive than
49 the limitations imposed on the power of the association to deal with
50 other persons.

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

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

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

61 (3) Reasonably restrict the leasing of residential units so long as
62 the rules are designed to meet the current underwriting requirements
63 adopted by institutional lenders who regularly lend money secured by
64 first mortgages on units in common interest communities or regularly
65 purchase those mortgages.

66 Otherwise, the association may not regulate the use of, or behavior in,
67 units unless empowered to do so by the declaration or sections 445.151
68 to 445.420.

445.303. 1. Except as provided in the declaration, the bylaws,
2 subsection 2 of this section, or other provisions of sections 445.151 to
3 445.420, the executive board may act in all instances on behalf of the
4 association. In the performance of their duties, officers and members
5 of the executive board appointed by the declarant are required to
6 exercise the care required of a trustee for the unit owners. Otherwise,
7 officers and members of the executive board shall exercise reasonable
8 care.

9 2. The executive board may not act on behalf of the association
10 to amend the declaration, to terminate the planned community, or to
11 elect members of the executive board or determine the qualifications,
12 powers and duties, or terms of office of executive board members, but

13 the executive board may fill vacancies in its membership for the
14 unexpired portion of any term.

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

26 4. Subject to subsection 5 of this section, the declaration may
27 provide for a period of declarant control of the association, during
28 which period a declarant, or persons designated by him, may appoint
29 and remove the officers and members of the executive
30 board. Regardless of the period provided in the declaration, a period
31 of declarant control terminates no later than the earlier of:

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

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

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

38 A declarant may voluntarily surrender the right to appoint and remove
39 officers and members of the executive board before termination of that
40 period, but in that event the declarant may require, for the duration of
41 the period of declarant control, that specified actions of the association
42 or executive board, as described in a recorded instrument executed by
43 the declarant, be approved by the declarant before they become
44 effective.

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

50 fifty percent of the units which may be created to unit owners other
51 than a declarant, not less than thirty-three and one-third percent of the
52 members of the executive board must be elected by unit owners other
53 than the declarant.

54 6. Not later than the termination of any period of declarant
55 control, the unit owners shall elect an executive board of at least three
56 members, at least a majority of whom must be unit owners. The
57 executive board shall elect the officers. The executive board members
58 and officers shall take office upon election.

59 7. Notwithstanding any provision of the declaration or bylaws to
60 the contrary, the unit owners, by a two-thirds vote of all persons
61 present and entitled to vote at any meeting of the unit owners at which
62 a quorum is present, may remove any member of the executive board
63 with or without cause, other than a member appointed by the
64 declarant.

65 8. On or before the date of termination of declarant control, the
66 declarant shall relinquish control of the planned community and the
67 unit owners shall accept control. At the same time, the declarant shall
68 deliver to the planned community all property, books, accounts and
69 articles of incorporation of the association and of the planned
70 community held or controlled by the declarant from the date the
71 association was organized.

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

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

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

13 (2) If a successor to any special declarant right is an affiliate of
14 a declarant, the transferor is jointly and severally liable with the
15 successor for any obligations or liabilities of the successor relating to

16 the planned community;

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

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

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

40 4. Upon foreclosure of a security interest, sale by a trustee under
41 an agreement creating a security interest, tax sale, judicial sale or sale
42 under bankruptcy code or receivership proceedings, of all interests in
43 a planned community owned by a declarant:

44 (1) The declarant ceases to have any special declarant rights;
45 and

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

49 5. The liabilities and obligations of a person who succeeds to
50 special declarant rights are as follows:

51 (1) A successor to any special declarant right who is an affiliate
52 of a declarant is subject to all obligations and liabilities imposed on the

53 transferor by sections 445.151 to 445.420 or by the declaration;

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

58 (a) On a declarant which relate to the successor's exercise or
59 nonexercise of special declarant rights; or

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

61 a. Misrepresentations by any previous declarant;

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

64 c. Breach of any fiduciary obligation by any previous declarant
65 or the previous declarant's appointees to the executive board; or

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

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

73 (4) A successor to all special declarant rights held by the
74 successor's transferor who succeeded to those rights under a deed or
75 other instrument of conveyance in lieu of foreclosure or a judgment or
76 instrument conveying title under subsection 3 of this section may
77 declare such successor's intention in a recorded instrument to hold
78 those rights solely for transfer to another person. Thereafter, until
79 transferring all special declarant rights to any person acquiring title
80 to any unit or real estate subject to development rights owned by the
81 successor, or until recording an instrument permitting exercise of all
82 those rights, that successor may not exercise any of those rights other
83 than any right held by the successor's transferor to control the
84 executive board in accordance with the provisions of subsection 4 of
85 section 445.303 for the duration of any period of declarant control, and
86 any attempted exercise of those rights is void. So long as a successor
87 declarant may not exercise special declarant rights under this
88 subsection, the successor declarant is not subject to any liability or
89 obligation as a declarant other than liability for the successor

90 declarant's acts and omissions under subsection 4 of section 445.303.

91 6. Nothing in this section subjects any successor to a special
92 declarant right to any claims against or other obligations of a
93 transferor declarant, other than claims and obligations arising under
94 sections 445.151 to 445.420 or the declaration.

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

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

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

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

12 May be terminated without penalty by the association at any time after
13 the executive board elected by the unit owners under subsection 5 of
14 section 445.303 takes office upon not less than ninety days' notice to the
15 other party. This section does not apply to any lease, the termination
16 of which would terminate the planned community or reduce its size,
17 unless the real estate subject to that lease was included in the planned
18 community for the purpose of avoiding the right of the association to
19 terminate a lease under this section.

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

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

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

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

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

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

13 (6) The method of amending the bylaws by vote or agreement of

14 unit owners to which at least a majority of the votes in the association
15 are allocated.

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

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

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

445.308. A meeting of the association must be held at least once
2 each year. Special meetings of the association may be called by the
3 president, a majority of the executive board or by unit owners having
4 twenty percent, or any lower percentage specified in the bylaws, of the
5 votes in the association. Not less than ten nor more than sixty days in
6 advance of any meeting, the secretary or other officer specified in the
7 bylaws shall cause notice to be hand-delivered or sent prepaid by
8 United States mail to the mailing address of each unit or to any other
9 mailing address designated in writing by the unit owner. The notice of
10 any meeting must state the time and place of the meeting and the items

11 on the agenda, including the general nature of any proposed
12 amendment to the declaration or bylaws, any budget changes, and any
13 proposal to remove a director or officer.

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

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

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

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

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

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

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

28 **(3) Lessees are entitled to notice of meetings, access to records,**
29 **and other rights respecting those matters as if they were unit**
30 **owners. Unit owners must also be given notice, in the manner provided**
31 **in section 445.308, of all meetings at which lessees may be entitled to**
32 **vote.**

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

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

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

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

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

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

27 governed by section 445.317.

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

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

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

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

23 3. The association, on behalf of the unit owners, may contract to

24 convey an interest in a planned community under subsection 1 of this
25 section, but the contract is not enforceable against the association until
26 approved under subsections 1 and 2 of this section. Thereafter, the
27 association has all powers necessary and appropriate to effect the
28 conveyance or encumbrance, including the power to execute deeds or
29 other instruments.

30 4. Any purported conveyance, encumbrance, judicial sale or
31 other involuntary transfer of common elements, unless made under this
32 section is void.

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

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

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

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

26 2. In the case of a building containing units having horizontal

27 boundaries described in the declaration, the insurance maintained
28 under subdivision (1) of subsection 1 of this section, to the extent
29 reasonably available, shall include the units, but need not include
30 improvements and betterments installed by unit owners, but if they are
31 covered, any increased charge shall be assessed by the association to
32 those owners.

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

40 4. Insurance policies carried under subsections 1 and 2 of this
41 section must provide that:

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

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

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

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

53 5. Any loss covered by the property policy under subdivision (1)
54 of subsection 1 of this section and under subsection 2 of this section
55 must be adjusted with the association, but the insurance proceeds for
56 that loss are payable to any insurance trustee designated for that
57 purpose, or otherwise to the association, and not to any holder of a
58 security interest. The insurance trustee or the association shall hold
59 any insurance proceeds in trust for the association unit owners and
60 lienholders as their interests may appear. Subject to the provisions of
61 subsection 7 of this section, the proceeds must be disbursed first for the
62 repair or restoration of the damaged property, and the association unit
63 owners and lien holders are not entitled to receive payment of any

64 portion of the proceeds unless there is a surplus of proceeds after the
65 property has been completely repaired or restored, or the planned
66 community is terminated.

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

69 7. An insurer that has issued an insurance policy under this
70 section shall issue certificates or memoranda of insurance to the
71 association and, upon written request, to any unit owner or holder of
72 a security interest. The insurer issuing the policy may not cancel or
73 refuse to renew it until thirty days after notice of the proposed
74 cancellation or nonrenewal has been mailed to the association, each
75 unit owner and holder of a security interest whom a certificate or
76 memorandum of insurance have been issued at their respective last
77 known addresses.

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

81 (1) The planned community is terminated, in which case section
82 445.210 applies;

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

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

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

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

91 (1) The insurance proceeds attributable to the damaged common
92 elements must be used to restore the damaged area to a condition
93 compatible with the remainder of the planned community;

94 (2) The insurance proceeds attributable to units and limited
95 common elements which are not rebuilt must be distributed to the
96 owners of those units and the owners of the units to which those
97 limited common elements were allocated, or to lienholders, as their
98 interests may appear; and

99 (3) The remainder of the proceeds must be distributed to all the
100 unit owners or lienholders, as their interests may appear, in proportion

101 to the common expense liabilities of all the units.

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

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

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

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

6 2. Except for assessments under subsections 3, 4, and 5 of this
7 section, all common expenses must be assessed against all the units in
8 accordance with the allocation set forth in the declaration under
9 subsection 1 of section 445.207. Any past due common expense
10 assessment or installment thereof bears interest at the rate established
11 by the association not exceeding eighteen percent per year.

12 3. To the extent required by the declaration:

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

17 (2) Any common expense or portion thereof benefiting fewer than
18 all of the units must be assessed exclusively against the units benefited;
19 and

20 (3) The costs of insurance must be assessed in proportion to risk
21 and the costs of utilities must be assessed in proportion to usage.

22 4. Assessments to pay a judgment against the association may be

23 made only against the units in the planned community at the time the
24 judgment was entered, in proportion to their common expense
25 liabilities.

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

29 6. If common expense liabilities are reallocated, common expense
30 assessments and any installment thereof not yet due shall be
31 recalculated in accordance with the reallocated common expense
32 liabilities.

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

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

18 2. A lien under this section is prior to all other liens and

19 encumbrances on a unit except:

20 (1) Liens and encumbrances recorded before the recordation of
21 the declaration;

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

25 (3) Liens for real estate taxes and other governmental
26 assessments or charges against the unit. This lien is also prior to a
27 security interest described in subdivision (2) of this subsection to the
28 extent of the common expense assessments based on the periodic
29 budget adopted by the association under subsection 1 of section 445.315
30 which would have to become due in the absence of acceleration during
31 the six months immediately preceding institution of an action to
32 enforce the lien or collect the debt; provided that the association shall
33 not be entitled to this lien priority if it exercises its right to foreclose
34 the lien as provided in subsection 1 of this section. In addition to the
35 lien priority of this subdivision, the association shall be entitled to any
36 costs and reasonable attorney's fees incurred in the collection of the
37 unpaid assessment provided by the association, when any portion of the
38 assessment or installment thereof has been delinquent for at least sixty
39 days subsequent to August 28, 2007, the association sends a notice by
40 return receipt mail, stating the amount of the delinquency, to the unit
41 owner and the holder of a first security interest, provided that such
42 holder has informed the association of its name and mailing address;
43 and at least thirty days prior to initiating a proceeding to enforce the
44 association's lien under subsection 1 of this section, the association
45 shall send a notice by return receipt mail, stating its intention to file
46 such action, to the holder of a first security interest, provided that the
47 holder has informed the association of its name and mailing address.
48 This subsection does not affect the priority of mechanic's or
49 materialmen's liens, or the priority of liens for other assessments made
50 by the association. The lien under this section is not subject to the
51 provisions of section 513.475, RSMo.

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

55 4. Recording of the declaration constitutes record notice and

56 perfection of the lien. No further recordation of any claim of lien for
57 assessment under this section is required.

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

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

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

67 8. The association upon written request shall furnish to a unit
68 owner a recordable statement setting forth the amount of unpaid
69 assessments against such owner's unit. The statement must be
70 furnished within ten business days after receipt of the request and is
71 binding on the association, the executive board and every unit owner.

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

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

11 3. Whether perfected before or after the creation of the planned
12 community, if a lien other than a security interest, including a
13 judgment lien or lien attributable to work performed or materials
14 supplied before creation of the planned community, becomes affective
15 against two or more units, the unit owner of an affected unit may pay
16 to the lienholder the amount of the lien attributable to the unit owner's
17 unit, and the lienholder, upon receipt of payment, promptly shall
18 deliver a release of the lien covering that unit. The amount of the
19 payment must be proportionate to the ratio which that unit owner's
20 common expense liability bears to the common expense liabilities of all
21 unit owners whose units are subject to the lien. After payment, the

22 association may not assess or have a lien against that unit owner's unit
23 for any portion of the common expenses incurred in connection with
24 that lien.

25 4. A judgment against the association must be indexed in the
26 name of the planned community and the association, and, when so
27 indexed, is notice of the lien against the units.

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

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

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

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

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

445.402. 1. Except as provided in subsection 2 of this section, a

2 declarant, prior to the offering of any interest in a unit to the public,
3 shall prepare an original sale certificate conforming to the
4 requirements of sections 445.403, 445.404, 445.405, and 445.406.

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

10 3. Any declarant or dealer who offers a unit to a purchaser shall
11 deliver an original sale certificate in the manner prescribed in section
12 445.408. The person who prepared all or a part of the original sale
13 certificate is liable under sections 445.408 and 445.417 for any false or
14 misleading statement set forth therein or for any omission of material
15 fact therefrom with respect to that portion of the original sale
16 certificate which the declarant prepared. If a declarant did not
17 prepare any part of an original sale certificate that such declarant
18 delivers, such declarant is not liable for any false or misleading
19 statement set forth therein or for any omission of material fact
20 therefrom unless such declarant had actual knowledge of the statement
21 or omission or, in the exercise of reasonable care, should have known
22 of the statement or omission.

23 4. If a unit is part of two or more planned communities or is part
24 of a planned community and is part of any other real estate regime in
25 connection with the sale of which the delivery of an original sale
26 certificate is required under the laws of this state, a single original sale
27 certificate conforming to the requirements of sections 445.403, 445.404,
28 445.405, and 445.406 as those requirements relate to each planned
29 community in which the unit is located, and to any other requirements
30 imposed under the laws of this state, may be prepared and delivered in
31 lieu of providing two or more original sale certificates.

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

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

6 (2) A general description of the planned community, including,
7 to the extent possible, the types, number, and declarant's schedule of

8 commencement and completion of construction of buildings and
9 amenities that declarant anticipates including in the planned
10 community;

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

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

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

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

31 (b) A statement of any other reserves;

32 (c) The projected common expense assessment by category of
33 expenditures for the association; and

34 (d) The projected monthly common expenses assessment for each
35 type of unit;

36 (6) Any services, including but not limited to water or sewer
37 district or utility provider owned or controlled by declarant, and any
38 private roadway that serves other property in addition to the planned
39 community, not reflected in the budget that the declarant provides, or
40 expenses that said declarant pays, and that said declarant expects may
41 become at any subsequent time a common expense of the association
42 and the projected common expense assessment attributable to each of
43 those services or expenses for the association and for each type of unit;

44 (7) Any initial or special fee due from the purchaser at closing,

45 together with a description of the purpose and method of calculating
46 the fee;

47 (8) A description of any liens, defects, or encumbrances on or
48 affecting the title to the planned community including but not limited
49 to subsurface rights to minerals, natural gas storage, and other such
50 rights;

51 (9) A description of any financing offered or arranged by the
52 declarant;

53 (10) The terms and significant limitations of any warranties
54 provided by the declarant, including statutory warranties, and
55 limitations on the enforcement thereof or on damages;

56 (11) A statement that:

57 (a) Within ten days after receipt of an original sale certificate
58 and before conveyance, the seller may cancel any contract for purchase
59 of a unit from a declarant;

60 (b) If a purchaser receives the original sale certificate more than
61 ten days before signing a contract, such purchaser cannot cancel the
62 contract;

63 (12) A statement of any unsatisfied judgments or pending suits
64 against the association, and the status of any pending suits material to
65 the planned community of which a declarant has actual knowledge;

66 (13) A statement that any deposit made in connection with the
67 purchase of a unit will be held in an escrow until closing and will be
68 returned to the purchaser if the purchaser cancels the contract under
69 section 445.408, together with the name and address of the escrow
70 agent;

71 (14) Any restraints on alienation of any portion of the planned
72 community;

73 (15) A description of the insurance coverage provided for the
74 benefit of unit owners;

75 (16) Any current or expected fees or charges to be paid by unit
76 owners for the use of any common elements and other facilities related
77 to the planned community;

78 (17) A list of all improvements contemplated in the planned
79 community which the declarant reserves the right not to build, and a
80 list of all improvements contemplated in the planned community which
81 the declarant is obligated to build, as provided in sections 445.418 and

82 445.419;

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

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

90 (20) All unusual and material circumstances, features and
91 characteristics of the planned community and the units, including but
92 not limited to natural features, view, any additional charges or
93 premiums for a particular unit, and any material fact relating to
94 adjacent property of which the declarant has or should have
95 knowledge.

96 2. If a planned community composed of not more than twelve
97 units is not subject to any development rights, and no power is
98 reserved to a declarant to make the planned community part of a larger
99 planned community, group of planned communities, or other real
100 estate, an original sale certificate may, but need not, include the
101 information otherwise required by subdivisions (9), (10), (15), (16), (17),
102 (18), and (19) of subsection 1 of this section, and the narrative
103 descriptions of documents required by subdivision (4) of subsection 1
104 of this section.

105 3. A declarant promptly shall amend the original sale certificate
106 to report any material change in the information required by this
107 section.

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

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

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

10 (3) If any of the units that may be built within real estate subject
11 to development rights are not to be restricted exclusively to residential

12 use, a statement, with respect to each portion of that real estate, of the
13 maximum percentage of the real estate areas, and the maximum
14 percentage of the floor areas of all units that may be created therein,
15 that are not restricted exclusively to residential use;

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

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

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

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

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

39 (9) A statement that any limited common elements created under
40 any development right reserved by the declarant will be of the same
41 general types and sizes as the limited common elements within others
42 parts of the planned community, or a statement of the types and sizes
43 planned, or a statement that no assurances are made in that regard;

44 (10) A statement that the proportion of limited common elements
45 to units created under any development right reserved by the declarant
46 will be approximately equal to the proportion existing within other
47 parts of the planned community, or a statement of any other assurances
48 in that regard, or a statement that no assurances are made in that

49 regard;

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

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

445.405. If the declaration provides that ownership or occupancy
2 of any units is or may be in time shares, the original sale certificate
3 shall disclose, in addition to the information required by section
4 445.403:

5 (1) The number and identity of units in which time shares may
6 be created;

7 (2) The total number of time shares that may be created;

8 (3) The minimum duration of any time shares which may be
9 created; and

10 (4) The extent to which the creation of time shares will or may
11 affect the enforceability of the association's lien for assessments
12 provided in section 445.316.

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

4 (1) A statement of work done, including the nature thereof, on
5 the foundation, structural members, roof, chimney, gutters and
6 downspouts, exterior and interior walls, ceilings, floors, windows, attic
7 and wall insulation, including installer's statement of present "R" value,
8 sewers and stacks, plumbing system and related fixtures, electrical
9 system and related fixtures, and furnace and heating system, including
10 the manufacturer's energy efficiency ratio of any new heating or
11 refrigeration equipment;

12 (2) A statement by the declarant of the expected useful life of
13 each item reported on in subdivision (1) of this subsection or a
14 statement that no representations are made in that regard; and a list
15 of any outstanding notices of uncured violations of building code or
16 other municipal regulations.

17 **2. This section applies only to buildings containing units that**
18 **may be occupied for residential use.**

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

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

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

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

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

12 **(2) The amount of the periodic common expense assessment and**

13 any unpaid common expense assessment or special assessment
14 currently due and payable from the selling unit owner;

15 (3) Any other fees payable by unit owners;

16 (4) Any capital expenditures approved by the association for the
17 current and two next succeeding fiscal years;

18 (5) The amount of any reserves for capital expenditures and of
19 any portions of those reserves designated by the association for any
20 specified projects;

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

23 (7) The current operating budget of the association;

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

26 (9) Any insurance coverage provided for the benefit of unit
27 owners;

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

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

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

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

45 3. A purchaser is not liable for any unpaid assessment or fee
46 greater than the amount set forth in the resale certificate prepared by
47 the association. A unit owner is not liable to a purchaser for the failure
48 or delay of the association to provide the resale certificate in a timely
49 manner, but the purchase contract is voidable by the purchaser until

50 the certificate has been provided and for five days thereafter or until
51 conveyance, whichever first occurs.

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

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

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

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

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

445.412. 1. A declarant of a planned community containing
2 conversion buildings, and any dealer who intends to offer units in such
3 a planned community, shall give each of the residential tenants and any
4 residential subtenant in possession of a portion of a conversion
5 building notice of the conversion and provide those persons with the
6 original sale certificate no later than one hundred twenty days before
7 the tenants and any subtenant in possession are required to
8 vacate. The notice must set forth generally the rights of tenants and
9 subtenants under this section and shall be hand-delivered to the unit
10 or mailed by prepaid United States mail to the tenant and subtenant at
11 the address of the unit or any other mailing address provided by a
12 tenant. No tenant or subtenant may be required to vacate upon less
13 than one hundred twenty-days notice, except by reason of nonpayment

14 of rent, waste or conduct that disturbs other tenants' peaceful
15 enjoyment of the premises, and the terms of the tenancy may not be
16 altered during that period. Failure to give notice as required by this
17 section is a defense to an action for possession.

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

30 3. If a seller, in violation of subsection 2 of this section, conveys
31 a unit to a purchaser for value who has no knowledge of the violation,
32 recordation of the deed conveying the unit extinguishes any right a
33 tenant may have under subsection 2 of this section to purchase that
34 unit if the deed states that the seller has complied with subsection 2 of
35 this section, but does not affect the right of a tenant to recover
36 damages from the seller for a violation of subsection 2 of this section.

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

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

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

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

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

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

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

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

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

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

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

10 (1) Free from defective materials; and

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

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

19 4. Warranties imposed by this section may be excluded or

20 modified as specified in section 445.415.

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

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

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

4 (1) May be excluded or modified by agreement of the parties; and

5 (2) Are excluded by expression of disclaimer, such as "as is",
6 "with all faults", or other language which in common understanding
7 calls the purchaser's attention to the exclusion of warranties.

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

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

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

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

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

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

13 (2) As to each common element, a judicial proceeding for breach

14 of any obligation to the association arising under section 445.413 or
15 445.414 shall be commenced within three years after the cause of action
16 accrues. Subject to subsections 3 and 4 of this section, a cause of action
17 of the association for breach of warranty of quality, as to each common
18 element, accrues at the time the common element is completed or, if
19 later:

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

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

26 3. If a warranty of quality explicitly extends to future
27 performance or duration of any improvement or component of the
28 common elements, the cause of action accrues at the time the breach is
29 discovered or at the end of the period for which the warranty explicitly
30 extends, whichever is earlier.

31 4. During the period of declarant control, the association may
32 authorize an independent committee of the executive board to evaluate
33 and enforce by any lawful means warranty claims involving the
34 common elements and to compromise those claims. Only members of
35 the executive board elected by unit owners other than the declarant
36 and other persons appointed by those independent members may serve
37 on the committee and the committee's decision shall be free of any
38 control by the declarant or any member of the executive board or
39 officer appointed by the declarant. All costs reasonably incurred by the
40 committee, including attorney's fees, are common expenses and shall be
41 added to the budget annually adopted by the association under section
42 445.315. If the committee is so created, the limitation period for claims
43 for these warranties begins to run from the date of the first meeting of
44 the committee, regardless of when declarant control terminates.

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

7 in an appropriate case, may award court costs and reasonable
8 attorney's fees.

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

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

16 (2) An agreement to submit to binding arbitration must be made
17 in writing signed by the parties; and

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

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

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

7 2. The declarant is subject to liability for the prompt repair and
8 restoration, to a condition compatible with the remainder of the
9 planned community, of any portion of the planned community affected
10 by the exercise of rights reserved under or created by section 445.210,
11 445.211, 445.212, 445.213, 445.215 or 445.216.

445.420. In the case of sale of a unit where delivery of an original
2 sale certificate is required, a contract of sale may be executed, but no
3 interest in that unit may be conveyed until the declaration is recorded

4 and the unit is substantially completed, as evidenced by a recorded
5 certificate of substantial completion executed by an independent
6 registered architect, surveyor or engineer, or by issuance of a
7 certificate of occupancy authorized by law.

✓

Unofficial

Bill

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