

SECOND REGULAR SESSION

# SENATE BILL NO. 935

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 20, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5549S.02I

## AN ACT

To amend chapter 449, RSMo, by adding thereto twenty-four new sections relating to homeowners' associations.

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

Section A. Chapter 449, RSMo, is amended by adding thereto twenty-four  
2 new sections, to be known as sections 449.101, 449.102, 449.103, 449.104,  
3 449.105, 449.108, 449.111, 449.116, 449.205, 449.217, 449.301, 449.302, 449.303,  
4 449.306, 449.308, 449.309, 449.310, 449.313, 449.315, 449.316, 449.318, 449.323,  
5 449.409, and 449.417, to read as follows:

449.101. Sections 449.101 to 449.417 may be cited as the "Missouri  
2 Homeowners' Bill of Rights".

449.102. Sections 449.101 to 449.417 shall apply to:

2 (1) Any planned community created in this state after January  
3 1, 2017;

4 (2) Sections 449.103, 449.217, 449.301, 449.302, 449.308, 449.309,  
5 449.310, 449.313, 449.315, 449.316, 449.318, 449.323, 449.409, and 449.417  
6 and subsections 2 to 5 of section 449.306 shall apply to all planned  
7 communities created in this state before January 1, 2017, but those  
8 sections apply only with respect to events and circumstances occurring  
9 after January 1, 2017, and do not invalidate existing provisions of the  
10 declaration, bylaws, or plats of those planned communities.

449.103. As used in sections 449.101 to 449.417, the following  
2 terms mean:

3 (1) "Allocated interests", the common expense liability and votes  
4 in the association;

5 (2) "Assessment", the sum attributable to each unit and due to the

6 association pursuant to the budget adopted under section 449.323;

7 (3) "Association", the unit owners' association;

8 (4) "Bylaws", the written instruments, however denominated, that  
9 contain the procedures for conduct of the affairs of the association,  
10 regardless of the form in which the association is organized, including  
11 any amendments to the instrument;

12 (5) "Common elements", any real estate within a planned  
13 community which is owned or leased by the association other than a  
14 unit;

15 (6) "Common expense liability", the liability for common expenses  
16 allocated to each unit;

17 (7) "Common expenses", expenditures made by, or financial  
18 liabilities of, the association, together with any allocations to reserves;

19 (8) "Declarant", a person or group of persons acting in concert  
20 that:

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

24 (b) Reserves or succeeds to any declarant right;

25 (9) "Declaration", the instrument, however denominated, that  
26 creates a planned community, including any amendments to that  
27 instrument;

28 (10) "Development rights", any right or combination of rights  
29 reserved by a declarant in the declaration to:

30 (a) To add real estate to a planned community;

31 (b) To create units, common elements, or limited common  
32 elements within a planned community;

33 (c) To subdivide units or convert into common elements; or

34 (d) To withdraw real estate from a planned community;

35 (11) "Executive board", the body, regardless of name, designated  
36 in the declaration or bylaws which has power to act on behalf of the  
37 association;

38 (12) "Limited common element", a portion of the common  
39 elements allocated for the exclusive use of one or more but fewer than  
40 all of the units;

41 (13) "Party wall", each wall, including but not limited to walls  
42 separating adjoining attached units, fence walls, and common garage

43 walls, which is built as a part of the original construction of a unit and  
44 placed on the dividing line between the units;

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

51 (15) "Planned community", real property with respect to which  
52 a person, by virtue of such person's ownership of a unit, is obligated to  
53 pay real property taxes, insurance premiums, maintenance, or  
54 improvement of other real property described in a declaration. For the  
55 purposes of sections 449.101 to 449.417, neither a cooperative nor a  
56 condominium is a planned community, but real estate comprising a  
57 condominium or cooperative may be part of a planned community;

58 (16) "Record", information that is inscribed on a tangible medium  
59 or that is stored in an electronic or other medium and is retrievable in  
60 perceivable form;

61 (17) "Residential purposes", use for dwelling or recreational  
62 purposes, or both;

63 (18) "Rule", a policy, guideline, procedure, or regulation of an  
64 association, however denominated, which is not set forth in the  
65 declaration or bylaws and which governs the conduct of persons or the  
66 use or appearance of property;

67 (19) "Special declarant rights", rights reserved for the benefit of  
68 a declarant:

69 (a) To complete improvements as indicated on plats and plans  
70 filed with the declaration;

71 (b) To exercise any development rights;

72 (c) To maintain sales offices, management offices, signs  
73 advertising the planned community, and models;

74 (d) To use easements through the common elements for the  
75 purpose of making improvements within the planned community or  
76 within real estate which may be added to the planned community;

77 (e) To make the planned community part of a larger planned  
78 community or group of planned communities;

79 (f) To make the planned community subject to a master

80 association; or

81 (g) To appoint or remove any officer or executive board member  
82 of the association or any master association during any period of  
83 declarant control;

84 (20) "Unit", a physical portion of the planned community  
85 designated for separate ownership or occupancy such as a lot as  
86 depicted on the plats or plans recorded with the declaration;

87 (21) "Unit owner", a declarant or other person who owns a unit,  
88 or a lessee of a unit in a leasehold planned community whose lease  
89 expires simultaneously with any lease the expiration or termination of  
90 which will remove the unit from the planned community, but does not  
91 include a person having an interest in a unit solely as security for an  
92 obligation. Ownership of a unit does not include a leasehold interest  
93 of less than twenty years in a unit, including renewal options.

449.104. Except as expressly provided in sections 449.101 to  
2 449.417, the effect of these sections may not be varied by agreement,  
3 and rights conferred by these sections may not be waived.

449.105. Each unit constitutes for all purposes a separate parcel  
2 of real estate, and shall be separately assessed and taxed. The personal  
3 property of an association, if any, shall not be subject to taxation under  
4 section 137.122 and common elements shall not be subject to separate  
5 assessment or taxation.

449.108. The principles of law and equity, including the law of  
2 corporations, any other form of organization authorized by the law of  
3 this state, and unincorporated associations, the law of real estate, and  
4 the law relative to capacity to contract, principal and agent, eminent  
5 domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,  
6 receivership, substantial performance, or other validating or  
7 invalidating cause supplement the provisions of sections 449.101 to  
8 449.417, except to the extent inconsistent with sections 449.101 to  
9 449.417. If there is a conflict between sections 449.101 to 449.417 and  
10 other law of this state, sections 449.101 to 449.417 shall prevail.

449.111. If any provision of sections 449.101 to 449.417 or the  
2 application thereof to anyone or to any circumstances is held invalid,  
3 the remainder of those sections and the application of such provisions  
4 to others or other circumstances shall not be affected thereby.

449.116. Sections 449.101 to 449.417 modify, limit, and supersede

2 the federal Electronic Signatures in Global and National Commerce Act,  
3 15 U.S.C. Section 7001, et seq., but do not modify, limit, or supersede  
4 Section 101(c) of that act, 15 U.S.C. Section 7001(c) or authorize  
5 electronic delivery of any of the notices described in Section 103(b) of  
6 that act, 15 U.S.C. Section 7003(b).

449.205. 1. For a planned community created after January 1,  
2 2017, the declaration shall contain:

- 3 (1) The name of the planned community and the association;
- 4 (2) The name of every county in which any part of the planned  
5 community is located;
- 6 (3) A legally sufficient description of the real estate included in  
7 the planned community;
- 8 (4) A statement of the number of units that may be created, and  
9 a specific period of time in which such units may be created;
- 10 (5) A description of the boundaries of each unit created by the  
11 declaration, including the unit's identifying number as provided on a  
12 plat;
- 13 (6) A description of any limited common elements and any real  
14 property that is or shall become common elements;
- 15 (7) Allocate to each unit a fraction or percentage of the common  
16 expenses of the association, and a portion of the votes in the  
17 association;
- 18 (8) The formula or method used to establish allocations of  
19 interests. Unless the declaration otherwise provides, each unit shall  
20 have equal allocated interests. Such allocations may not discriminate  
21 in favor of units owned by the declarant or an affiliate of the declarant;
- 22 (9) Any method of termination of the planned community;
- 23 (10) Any restrictions on alienation of units, including leasing, or  
24 any administrative fee or charge which may be imposed upon a  
25 voluntary resale of a unit;
- 26 (11) Any restriction or requirement on construction and design  
27 criteria and aesthetic standards;
- 28 (12) Any other restrictions and covenants the declarant or the  
29 association considers appropriate to preserve the planned community  
30 including restrictions on use or the number or other qualifications of  
31 persons who may occupy units;
- 32 (13) Any restriction on use such as single-family residential,

33 commercial, agricultural, or industrial;

34 (14) Any community standards affecting such matters as conduct,  
35 maintenance, leasing, pets, or other activities; and

36 (15) Any development rights and special declarant rights.

37 2. Except for minor variations due to rounding, the sum of the  
38 common expense liabilities, the sum of the undivided interest in the  
39 common elements allocated at any time to all the units shall equal one  
40 if stated as a fraction or one-hundred percent if stated as a percentage.  
41 In the event of discrepancy between an allocated interest and the result  
42 derived from application of the pertinent formula, the allocated  
43 interest stated in the declaration prevails.

44 3. A declarant shall not be liable for a declaration that fails to  
45 comply with this section, which may be cured by the executive board  
46 pursuant to subsection 5 of section 449.217.

449.217. 1. For a planned community created after January 1,  
2 2017, a declaration, plat, and plans may be amended only by a vote or  
3 agreement of unit owners to which at least sixty-seven percent of the  
4 votes in the association are allocated except for amendments  
5 authorized under subsection 6 of this section. The declaration may  
6 specify a smaller number only if all of the units are restricted  
7 exclusively to non-residential use. A unanimous vote of the unit owners  
8 is required to amend any declaration to change the boundaries of any  
9 unit, the allocated interest of a unit or the requirement that units shall  
10 be used solely for residential purposes for any planned community  
11 created after January 1, 2017. A unanimous vote of the unit owners is  
12 not required to change or add a restriction on use.

13 2. A declarant, prior to conveyance of a unit, may create or  
14 amend the declaration to change, add, or increase a special declarant  
15 right or development right. After conveyance of a unit, an amendment  
16 to change, increase, add, or amend a development right or special  
17 declarant right, but not exercise a right reserved, shall:

18 (1) Require unanimous consent of all unit owners other than the  
19 declarant to withdraw real estate from the planned community or to  
20 change the right to appoint or remove any officer or executive board  
21 member of the association or any master association during any period  
22 of declarant control;

23 (2) Require approval of two-thirds of the unit owners other than

24 the declarant to subdivide units, add real estate to the planned  
25 community, create units, common elements, or limited common  
26 elements within a planned community, to make the planned community  
27 part of a larger planned community or group of planned communities,  
28 to make the planned community subject to a master association; and

29       **(3) Require approval of a majority of the unit owners, other than**  
30 **the declarant, to change any of the following rights: convert a unit into**  
31 **common elements, to complete improvements as indicated on plats and**  
32 **plans filed with the declaration, to maintain sales offices, management**  
33 **offices, signs advertising the planned community and model, to use**  
34 **easements through the common elements for the purpose of making**  
35 **improvements within the planned community.**

36       **3. For a planned community created before January 1, 2017, any**  
37 **provision in a declaration that purports to specify a percentage larger**  
38 **than sixty-seven percent of the votes in the association to amend the**  
39 **declaration is hereby declared void as contrary to public policy, and**  
40 **until amended, such provision shall be deemed to specify a percentage**  
41 **of sixty-seven percent. Provided, however, unanimous consent of unit**  
42 **owners shall be required to amend any declaration to create or**  
43 **increase special declarant rights, increase the number of units, change**  
44 **the boundaries of any unit, the allocated interest of a unit or the**  
45 **requirement that units shall be used solely for residential**  
46 **purposes. Unanimous consent is not required to change or add a**  
47 **restriction on use, for any planned community created before January**  
48 **1, 2017.**

49       **4. The declaration of any planned community created before**  
50 **January 1, 2017, may be amended in conformity with the procedures**  
51 **and requirements as specified in the declaration, subject to subsection**  
52 **2 of this section.**

53       **5. After expiration or termination of declarant control:**

54       **(1) The association, acting through its executive board, may**  
55 **petition the circuit court in any county that includes all or a portion**  
56 **of the planned community for an order amending the declaration of the**  
57 **planned community if:**

58       **(a) The association has twice sent notice of the proposed**  
59 **amendment to all unit owners that are entitled by the declaration to**  
60 **vote on the proposed amendment or are required for approval of the**

61 proposed amendment by any first-class mail, postage pre-paid, to the  
62 last known address of the unit owner, if different than the unit, and the  
63 unit;

64 (b) The association has discussed the proposed amendment  
65 during at least one meeting of the association;

66 (c) The unit owners to which are allocated more than fifty  
67 percent of the number of consents, approvals, or votes of the  
68 association that would be required to adopt the proposed amendment  
69 pursuant to the declaration have voted in favor of the proposed  
70 amendment or not more than one-third of the unit owners have rejected  
71 the amendment within sixty days of mailing of the amendment; and

72 (d) All unit owners are joined as parties to the action and may  
73 be served by publication if personal service of process was  
74 unsuccessful.

75 (2) The court shall grant the petition after hearing if it finds:

76 (a) The association has complied with all requirements of  
77 paragraphs (a) to (d) of subdivision (1) of this subsection;

78 (b) No more than one-third of the unit owners entitled by the  
79 declaration to vote on the proposed amendment have filed written  
80 objections to the proposed amendment with the court prior to the  
81 hearing;

82 (c) The proposed amendment does not eliminate any rights or  
83 privileges designated in the declaration as belonging to any lenders  
84 that hold security interests in one or more units and that are entitled  
85 by the declaration to vote on the proposed amendment; and

86 (d) The proposed amendment would neither terminate the  
87 declaration nor change the allocated interests of the unit owners as  
88 stated in the declaration.

89 (3) Upon granting a petition validating the amendment, the court  
90 shall enter an order approving the proposed amendment and requiring  
91 the association to record the amendment in each county that includes  
92 all or any portion of the planned community. Once recorded, the  
93 amendment shall have the same legal effect as if it had been adopted  
94 pursuant to any requirements set forth in the declaration. Any order  
95 shall be subject to appellate proceeding, and, thereafter, shall not be  
96 subject to further challenge.

97 6. Notwithstanding anything to the contrary in sections 449.101

98 to 449.417, the executive board, or the declarant during the period of  
99 declarant control, is authorized to amend a declaration and bylaws to  
100 correct drafting or technical errors or to bring the planned community  
101 into compliance with conditions imposed by lenders providing  
102 government insured or guaranteed loans without a vote by the unit  
103 owners. Unit owners shall be provided notice of the proposed  
104 amendment.

105 7. Except for any amendment ordered by a court under  
106 subsection 5 of this section, no action to challenge the validity of an  
107 amendment to the declaration may be brought more than one year after  
108 the amendment to the declaration is recorded.

109 8. A copy of any amendment to the declaration or bylaws shall  
110 be provided to the unit owners.

449.301. 1. A unit owners' association must be organized no later  
2 than the date of conveyance of the first unit in the planned  
3 community. The membership of the association at all times consists  
4 exclusively of all unit owners or, following termination of the planned  
5 community, of all former unit owners entitled to distribution of  
6 proceeds, their heirs, successors, or assigns. The association shall have  
7 an executive board. The association shall be organized as a mutual  
8 benefit nonprofit corporation under chapter 355.

9 2. An association created before January 1, 2017, and, after  
10 transfer of control by the declarant, shall organize the association as  
11 a mutual benefit nonprofit corporation under chapter 355.

449.302. 1. Subject to the provisions of the declaration, the  
2 association, even if unincorporated or its corporate status has been  
3 administratively dissolved, shall have the authority to:

- 4 (1) Adopt and amend bylaws and may adopt and amend rules;
- 5 (2) Adopt and may amend budgets pursuant to Section 449.323;
- 6 (3) Hire and terminate managing agents and other employees,  
7 agents, and independent contractors;
- 8 (4) Institute, defend, or intervene in litigation or administrative  
9 proceedings in its own name on behalf of itself or two or more unit  
10 owners on matters affecting the planned community;
- 11 (5) Make contracts and incur liabilities;
- 12 (6) Suspend any right or privilege of a unit owner that fails to  
13 pay an assessment, but may not:

- 14           **(a) Deny a unit owner or other occupant access to the planned**  
15 **community, the owner's unit or the owner's parking space;**
- 16           **(b) Suspend a unit owner's right to vote; or**
- 17           **(c) Withhold services provided to a unit or a unit owner by the**  
18 **association if the effect of withholding the service would be to**  
19 **endanger the health, safety, or property of any person;**
- 20           **(7) Regulate the use and provide maintenance, repair,**  
21 **replacement, improvement, and modification of common elements;**
- 22           **(8) Acquire, hold, encumber, and convey in its own name any**  
23 **right, title, or interest to real or personal property;**
- 24           **(9) Grant easements, leases, licenses, and concessions through or**  
25 **over the common elements, and to release the same;**
- 26           **(10) Impose and receive any payments, fees, or charges for the**  
27 **use, rental, or operation of the common elements, other than limited**  
28 **common elements and services provided to unit owners;**
- 29           **(11) Impose charges for late payment;**
- 30           **(12) Levy interest on any past due common expense assessment**  
31 **or installment thereof bearing interest at the rate established by the**  
32 **association not to exceed eighteen percent per annum;**
- 33           **(13) Levy reasonable fines and withdraw the right to use any**  
34 **recreational facilities for violations of the declaration, bylaws, and**  
35 **rules after notice and opportunity to be heard;**
- 36           **(14) Impose reasonable charges for the preparation and**  
37 **recordation of amendments to the declaration or statements of unpaid**  
38 **assessments;**
- 39           **(15) Apply for establishment of any special taxing district by**  
40 **presenting a petition adopted by a majority vote of unit owners located**  
41 **within the proposed district to the political subdivision of the state in**  
42 **which the planned community is located. The political subdivision**  
43 **shall hold a public hearing concerning the matter not less than**  
44 **fourteen nor more than sixty days after the petition is received, and the**  
45 **hearing shall be held not less than seven days after notice of the**  
46 **hearing is published in a newspaper of general circulation qualified to**  
47 **publish legal matters and located within the boundary of the political**  
48 **subdivision. If no such newspaper exists within the boundary of such**  
49 **political subdivision, then the notice shall be published in the qualified**  
50 **newspaper nearest the political subdivision;**

- 51           **(16) Apply for financing under sections 67.2800-67.2835;**  
52           **(17) Borrow money and assign its rights to future income as**  
53 **security, including the right to receive common expense assessments;**  
54           **(18) Limit or prohibit leasing, provided that if a prohibition shall**  
55 **require an amendment to the declaration such amendment and**  
56 **prohibition shall only be effective against those owners of record after**  
57 **the effective date and recording of the amendment;**  
58           **(19) Exercise any other power conferred by the declaration or**  
59 **bylaws;**  
60           **(20) Impose a reasonable administrative charge when a unit is**  
61 **conveyed except for units conveyed at an involuntary sale. Any fee**  
62 **based upon the percentage of the sale price shall not be reasonable;**  
63           **(21) Interpret the provisions of the declaration and bylaws; and**  
64           **(22) Exercise all other powers that may be exercised in this state**  
65 **by a nonprofit corporation.**
- 66           **2. The executive board may determine whether to take**  
67 **enforcement action by exercising the association's power to impose**  
68 **sanctions or commencing an action for a violation of sections 449.101**  
69 **to 449.417 or the declaration, bylaws, and rules, including whether to**  
70 **compromise any claim for unpaid assessments or other claim made by**  
71 **or against it. The executive board does not have a duty to take**  
72 **enforcement action if it determines that, under the facts and**  
73 **circumstances presented:**
- 74           **(1) The association's legal position does not justify taking any or**  
75 **further enforcement action;**  
76           **(2) The covenant, restriction, or rule being enforced is, or is**  
77 **likely to be construed as, inconsistent with law;**  
78           **(3) Although a violation may exist or may have occurred, it is not**  
79 **so material as to be objectionable to a reasonable person or to justify**  
80 **expending the association's resources; or**  
81           **(4) It is not in the association's best interests to pursue an**  
82 **enforcement action.**
- 83           **3. The executive board's decision under subsection 2 of this**  
84 **section to not pursue enforcement under one set of circumstances does**  
85 **not prevent the executive board from taking enforcement action under**  
86 **another set of circumstances, but the executive board may not be**  
87 **arbitrary or capricious in taking enforcement action.**

449.303. 1. The executive board may act in all instances on  
2 behalf of the association. Officers and members of the executive board  
3 shall exercise ordinary and reasonable care for non-business decisions  
4 and shall exercise business judgment for business decisions.

5 2. The declaration shall provide for a period of declarant control  
6 of the association, during which a declarant or persons designated by  
7 the declarant, may appoint and remove the officers and members of the  
8 executive board.

9 3. The period of declarant control of the executive board shall  
10 terminate no later than the earliest of:

11 (1) Sixty days after conveyance of three-fourths of the units that  
12 may be created to unit owners other than a declarant;

13 (2) Two years after declarant has ceased to offer units for sale  
14 in the ordinary course of business;

15 (3) Two years after any right to add new units was last exercised;  
16 or

17 (4) The day the declarant, after giving notice to unit owners,  
18 records an instrument voluntarily surrendering all rights to control  
19 activities of the association.

20 4. Expiration or termination of the period of declarant control  
21 shall not affect or impair the declarant's exercise of any other rights  
22 reserved in the declaration.

23 5. One member of the executive board shall be elected by unit  
24 owners other than the declarant not later than sixty days after  
25 conveyance of one-fourth of the units that may be created. One-third  
26 of the members of the executive board shall be elected by unit owners  
27 other than the declarant not later than sixty days after conveyance of  
28 one-half of the units that may be created. All members of the executive  
29 board shall be elected by unit owners other than the declarant not later  
30 than sixty days after conveyance of three-fourths of the units that may  
31 be created.

32 6. A declarant may voluntarily surrender the right to appoint  
33 and remove officers and members of the executive board before the  
34 period of declarant control ends. In that event, the declarant may  
35 require declarant approval for specified actions of the association or  
36 executive board as described in a recorded instrument executed by the  
37 declarant before such specified actions become effective.

38           **7. The executive board may not:**

39           **(1) Amend the declaration except as provided in subsection 6 of**  
40 **section 449.217;**

41           **(2) Amend the bylaws except as provided in sections 449.101 to**  
42 **449.417;**

43           **(3) Terminate the planned community;**

44           **(4) Elect members to the executive board. The board may fill**  
45 **vacancies on the executive board for the unexpired portion of any term**  
46 **or, if earlier, until the next regularly scheduled election of executive**  
47 **board members; or**

48           **(5) Determine the qualifications, powers, duties, or terms of**  
49 **office of the executive board.**

**449.306. 1. For a planned community created after January 1,**  
2 **2017, the bylaws of the association shall:**

3           **(1) Provide the number of members of the executive board and**  
4 **the titles of the officers of the executive board;**

5           **(2) Provide for election of a president, secretary, treasurer, and**  
6 **any other officers of the executive board the bylaws specify;**

7           **(3) Specify the qualifications, powers and duties, terms of office,**  
8 **and manner of electing and removing executive board members and**  
9 **officers and filling vacancies. A member of the executive board must**  
10 **be a member in good standing including payment of assessments and**  
11 **other charges imposed under the declaration or bylaws;**

12           **(4) Specify the powers and duties the executive board or officers**  
13 **may delegate to other persons or to a managing agent;**

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

16           **(6) Contain any provision necessary to satisfy requirements in**  
17 **section 449.101 to 449-417 or the declaration concerning meetings,**  
18 **voting, quorums, and other activities of the association; and**

19           **(7) Provide for any matter required by law of this state other**  
20 **than section 449.101 to 449.417 to appear in the bylaws of organizations**  
21 **of the same type as the association.**

22           **2. Bylaws may be amended by a majority vote of the unit**  
23 **owners. Consent of the declarant is required for any amendment to the**  
24 **bylaws that would impair a development right or special declarant**  
25 **right.**

26           **3. If the bylaws are recorded, any subsequent amendment shall**  
27 **not require recordation if the bylaws are replaced by unrecorded**  
28 **bylaws, then a recorded instrument shall release the bylaws from the**  
29 **land records.**

30           **4. Except for any amendment ordered by a court under**  
31 **subsection 5 of section 449.217, no action to challenge the validity of an**  
32 **amendment to the bylaws may be brought more than six months after**  
33 **the amendment becomes effective.**

34           **5. The bylaws shall not include covenants or restrictions to use,**  
35 **occupancy, or alienation of units.**

36           **6. The declarant shall not be liable for bylaws that fail to comply**  
37 **with this section, which may be cured by the executive board pursuant**  
38 **to subsection 5 of section 449.217.**

**449.308. 1. After election of a unit owner to the executive board,**  
2 **the association shall:**

3           **(1) Hold a meeting of unit owners at least annually at a time,**  
4 **date, and place stated in or fixed in accordance with the**  
5 **bylaws. Unless limited by the declaration or bylaws, meetings of unit**  
6 **owners may be conducted by telephone, video, or other conferencing**  
7 **process, if the alternative process is consistent with subsection 7 of this**  
8 **section;**

9           **(2) Hold a special meeting of unit owners to address any matter**  
10 **affecting the planned community or the association if:**

11           **(a) Approved by the executive board; or**

12           **(b) Twenty percent of the unit owners, or any lower percentage**  
13 **specified in the bylaws, of the votes of the association request in**  
14 **writing that the secretary call the meeting. If the association does not**  
15 **notify the unit owners of a special meeting within thirty days after the**  
16 **requisite number or percentage of unit owners request the secretary to**  
17 **do so, the requesting members may directly notify all the unit owners**  
18 **of the meeting. Only matters described in the meeting notice required**  
19 **by subdivision (3) of this subsection may be considered at a special**  
20 **meeting;**

21           **(3) Notify unit owners of the time, date, and place of each annual**  
22 **and special association meeting not less than fifteen days nor more**  
23 **than sixty days before the meeting date. The minimum time to give**  
24 **notice may be reduced or waived for a meeting called to address an**

25 emergency. Notice shall be sent in accordance with the bylaws, or by  
26 first class mail, postage pre-paid, to the unit owner's last known  
27 address, if different than the unit address, and the unit. Unless a unit  
28 owner does not consent, notices may be sent by electronic or other  
29 means. The notice shall contain the time, date, and place of the  
30 meeting and the items on the agenda, including:

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

33 (b) Any budget increase in excess of ten-percent; and

34 (c) Any proposal to remove a member of the executive board; and

35 (4) Give unit owners reasonable opportunity at any meeting to  
36 comment regarding any matter affecting the planned community or the  
37 association.

38 2. Meetings of the executive board and committees of the  
39 association authorized to act for the association shall be open to the  
40 unit owners except during executive sessions. No final vote or action  
41 may be taken during an executive session. An executive session may be  
42 held only to:

43 (1) Consult with the association's attorney concerning legal  
44 matters;

45 (2) Discuss existing or potential litigation or mediation,  
46 arbitration, or administrative proceedings;

47 (3) Discuss labor or employee matters;

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

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

56 3. For purposes of this section, a gathering of board members at  
57 which the board members do not conduct association business is not a  
58 meeting of the executive board. The executive board and its members  
59 may not use incidental, electronic communications or social gatherings  
60 of board members or any other method to evade the open meeting  
61 requirements of this section.

62           4. At each executive board meeting, the executive board shall  
63 provide a reasonable opportunity for unit owners to comment  
64 regarding any matter affecting the planned community and the  
65 association subject to reasonable time limitations.

66           5. Unless the meeting is included in a schedule given to the unit  
67 owners or the meeting is called to address an emergency, the secretary  
68 or other officer specified in the bylaws shall give notice of each  
69 executive board meeting to each board member and to the unit  
70 owners. The notice shall be given at least ten days before the meeting  
71 and shall state the time, date, place, and agenda of the meeting.

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

77           7. Unless the declaration or bylaws otherwise provide, the  
78 executive board may meet by telephone, video, or other conferencing  
79 process if:

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

84           (2) The process provides all unit owners the opportunity to hear  
85 or perceive the discussion and to comment as provided in subsection  
86 4 of this section.

87           8. Instead of meeting, the executive board may act by unanimous  
88 consent as documented in a record authenticated by all its  
89 members. The secretary promptly shall give notice to all unit owners  
90 of any action taken by unanimous consent. After termination of the  
91 period of declarant control, the executive board may act by unanimous  
92 consent only to undertake ministerial actions or to implement actions  
93 previously approved or authorized at a meeting of the executive board.

94           9. Even if an action by the executive board is not in compliance  
95 with this section, it is valid unless set aside by a court or rescinded by  
96 the executive board or the association. A challenge to the validity of  
97 an action of the executive board for failure to comply with this section  
98 may not be brought more than sixty days after the minutes of the

99 executive board of the meeting at which the action was taken are  
100 approved or the record of that action is distributed to unit owners,  
101 whichever is later.

102       **10. The approved minutes shall be the official record of the**  
103 **executive board and the association. The executive board may provide**  
104 **that no video or other recording of any meeting may be made unless**  
105 **prior written consent of the executive board is obtained.**

**449.309. Unless the bylaws otherwise provide, a quorum is**  
2 **present throughout any meeting of the association if persons entitled**  
3 **to cast twenty percent of the votes in the association:**

4       **(1) Are present in person or by proxy at the beginning of the**  
5 **meeting;**

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

9       **(3) Are present by any combination of subdivisions (1) and (2) of**  
10 **this subsection. Unless the bylaws specify a larger number, a quorum**  
11 **of the executive board is present for purposes of determining the**  
12 **validity of any action taken at a meeting of the executive board only if**  
13 **individuals entitled to cast a majority of the votes on that board are**  
14 **present at the time a vote regarding that action is taken. If a quorum**  
15 **is present when a vote is taken, the affirmative vote of a majority of the**  
16 **board members present is the act of the executive board unless a**  
17 **greater vote is required by the declaration or bylaws.**

**449.310. 1. Unless prohibited or limited by the declaration or**  
2 **bylaws, unit owners may cast the vote allocated to their unit at a**  
3 **meeting in person or by an absentee ballot pursuant to subdivision (4)**  
4 **of subsection 2 of this section, or, when a vote is conducted without a**  
5 **meeting, by electronic or paper ballot pursuant to subsection 3 of this**  
6 **section.**

7       **2. At a meeting of unit owners the following requirements apply:**

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

12       **(2) If only one of several owners of a unit is present, that owner**  
13 **is entitled to cast all the votes allocated to that unit. If more than one**

14 of the owners is present, the votes allocated to that unit may be cast  
15 only in accordance with the agreement of a majority in interest of the  
16 owners of that unit, unless the declaration expressly provides  
17 otherwise. There is majority agreement if any one of the owners casts  
18 the votes allocated to the unit without protest being made promptly to  
19 the person presiding over the meeting by any of the other owners of the  
20 unit;

21 (3) Unless a greater number or fraction of the votes in the  
22 association is required by sections 449.101 to 449.417 or the declaration,  
23 a majority of the votes cast determines the outcome of any action of the  
24 association;

25 (4) Subject to subsection 1 of this section, a unit owner may vote  
26 by absentee ballot without being present at the meeting. The  
27 association promptly shall deliver an absentee ballot to an owner that  
28 requests it if the request is made at least three days before the  
29 scheduled meeting. Votes cast by absentee ballot shall be included in  
30 the tally of a vote taken at that meeting and for purposes of a quorum;

31 (5) When a unit owner votes by absentee ballot, the association  
32 shall be able to verify that the ballot is cast by the unit owner having  
33 the right to do so; and

34 (6) Quorum is required and a majority of the votes present cast  
35 would decide the matter unless a different percentage is required  
36 under sections 449.101 to 449.417, the declaration or bylaws.

37 3. Unless prohibited or limited by the declaration or bylaws, an  
38 association may conduct a vote without a meeting. In that event, the  
39 following requirements apply:

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

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

44 (3) The ballot shall:

45 (a) Set forth each proposed action and provide an opportunity  
46 to vote for or against the action;

47 (b) Indicate the number of responses needed to meet the quorum  
48 requirements;

49 (c) State the percent of votes necessary to approve each matter  
50 other than election of directors;

51           **(d) Specify the time and date by which a ballot shall be delivered**  
52 **to the association to be counted, which time and date may not be fewer**  
53 **than three days after the date the association delivers the ballot; and**

54           **(e) Describe the time, date, and manner by which unit owners**  
55 **wishing to deliver information to all unit owners regarding the subject**  
56 **of the vote may do so;**

57           **(4) Except as otherwise provided in the declaration or bylaws,**  
58 **a ballot is not revoked after delivery to the association by death or**  
59 **disability or attempted revocation by the unit owner that cast that vote;**  
60 **and**

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

64           **4. Unit owners shall also be given notice of all meetings at which**  
65 **lessees are entitled to vote.**

**449.313. 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 and subject to**  
4 **reasonable deductibles:**

5           **(1) Property insurance on the common elements and on property**  
6 **that shall become common elements, insuring risks of direct physical**  
7 **loss commonly insured against, which insurance, after application of**  
8 **any deductibles, shall be not less than eighty percent of the**  
9 **replacement cost of the insured property at the time the insurance is**  
10 **purchased and at each renewal date, exclusive of land, excavations,**  
11 **foundations, and other items normally excluded from property**  
12 **policies. For the units in any building with a party wall, property**  
13 **insurance shall include the units but need not include improvements**  
14 **and betterments installed after the date of original sale to a unit owner;**

15           **(2) Commercial general liability insurance in an amount**  
16 **determined by the executive board but not less than any amount**  
17 **specified in the declaration, covering all occurrences commonly insured**  
18 **against for bodily injury, property damage arising out of or in**  
19 **connection with the use, ownership, or maintenance of the common**  
20 **elements;**

21           **(3) Fidelity insurance covering the association and any person**  
22 **with access to association funds, including any managing agent; and**

23           **(4) Directors and officers liability insurance, including any**  
24 **managing agent as an additional insured.**

25           **2. If insurance described in subsection 1 of this section is not**  
26 **reasonably available, the association shall promptly provide notice of**  
27 **that fact to all unit owners. The declaration may require the**  
28 **association to carry any other insurance, and the association may carry**  
29 **other insurance it considers appropriate to protect the association or**  
30 **the unit owners.**

31           **3. Insurance policies carried pursuant to subsection 1 of this**  
32 **section shall provide that:**

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

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

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

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

44           **(5) The executive board has the discretion to make a claim or not**  
45 **without waiver. If the executive board does not make a claim, the**  
46 **association shall repair and replace any portion of the planned**  
47 **community to the same extent as if a claim was made and covered**  
48 **under the association's insurance.**

49           **4. Any loss covered by the property policy under subdivision (1)**  
50 **of subsection 1 of this section shall be adjusted with the association,**  
51 **but the insurance proceeds for that loss are payable to any insurance**  
52 **trustee designated for that purpose, or otherwise to the**  
53 **association. The policy shall not name mortgagees or holders of any**  
54 **security interest. The insurance trustee or the association shall hold**  
55 **any insurance proceeds in trust for the association, unit owners, and**  
56 **lien holders as their interests may appear. Subject to subsections 7 and**  
57 **8 of this section, the proceeds shall be disbursed first for repair or**  
58 **replacement of the damaged property. The association, unit owners,**  
59 **and lien holders are not entitled to receive payment of any portion of**

60 the proceeds unless there is a surplus of proceeds after the property  
61 has been completely repaired or replaced, or the planned community  
62 is terminated.

63 5. An insurer that has issued an insurance policy under this  
64 section shall issue certificates or memoranda of insurance to the  
65 association, and upon written request, to any unit owner or holder of  
66 a security interest. The insurer issuing the policy may not cancel or  
67 refuse to renew it:

68 (1) Until thirty days after notice of the proposed cancellation or  
69 non-renewal has been mailed to the association, each unit owner, and  
70 each holder of a security interest to whom a certificate or memoranda  
71 of insurance has been issued at their respective last known address; or

72 (2) Until ten days after notice of the proposed cancellation or  
73 non-renewal because of non-payment has been mailed to the  
74 association, each unit owner, and each holder of a security interest to  
75 whom a certificate or memoranda of insurance has been issued at their  
76 respective last known address.

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

80 (1) The planned community is terminated;

81 (2) The repair or replacement would be illegal; or

82 (3) Eighty percent of the unit owners, including every owner of  
83 a unit or assigned limited common elements that will not be rebuilt,  
84 vote not to rebuild.

85 7. The cost of repair or replacement in excess of insurance  
86 proceeds, deductibles, and reserves is a common expense. If the entire  
87 planned community is not repaired or replaced:

88 (1) The insurance proceeds attributable to the damaged common  
89 elements shall be used to restore the damaged area to a condition  
90 compatible with the remainder of the planned community; and

91 (2) Except to the extent that other persons will be distributees:

92 (a) The insurance proceeds attributable to units and limited  
93 common elements that are not repaired or replaced shall be distributed  
94 to the owners of those units and those owners of the units to which  
95 those limited common elements were allocated, or to lien holders, as  
96 their interests may appear; and

97           **(b) The remainder of the proceeds shall be distributed to all the**  
98 **unit owners or lien holders, as their interests may appear in proportion**  
99 **to the common expense liabilities of all the units.**

100           **8. If the unit owners vote not to rebuild any unit, that unit's**  
101 **allocated interests are automatically reallocated upon the vote as if the**  
102 **unit had been condemned, and the association shall promptly prepare,**  
103 **execute and record an amendment to the declaration reflecting the**  
104 **reallocation.**

105           **9. This section may be varied or waived in the case of a planned**  
106 **community all of whose units are restricted to nonresidential use.**

107           **10. At the discretion of the board, an insurance deductible may**  
108 **be assessed against a unit or units benefitted by the proceeds.**

**449.315. 1. All common expenses shall be assessed against all**  
2 **units in accordance with the allocations set forth in the declaration,**  
3 **subject to subsection 4 of this section. The board may allocate a**  
4 **common expense to fewer than all the units if the declaration states:**

5           **(1) A common expense associated with the maintenance, repair**  
6 **or replacement of a limited common element may be assessed against**  
7 **the units to which that limited common element is assigned, equally, or**  
8 **in any other proportion the declaration provides; and**

9           **(2) A common expense may be assessed against a unit or fewer**  
10 **than all the units if the unit or unit owner benefitted including an**  
11 **insurance deductible incurred by the association.**

12           **2. Assessments to pay a judgment against the association may be**  
13 **made only against the units in the planned community at the time the**  
14 **judgment was entered, in proportion to their common expense**  
15 **liabilities.**

16           **3. If damage to a unit or other part of the planned community,**  
17 **or if any other common expense is caused by the misconduct or**  
18 **negligence of any unit owner or a guest or invitee of a unit owner, the**  
19 **association may assess that expense exclusively against that owner's**  
20 **unit, even if the association maintains insurance with respect to that**  
21 **damage or common expense.**

22           **4. Until the association levies an assessment, the declarant shall**  
23 **pay all common expenses. After an assessment has been levied by the**  
24 **association, each unit shall pay assessments levied at least annually**  
25 **based upon a budget adopted at least annually by the association.**

26           5. If any common expense liabilities are reallocated, assessments  
27 and any installments thereof not yet due must be recalculated in  
28 accordance with the reallocated common expense liabilities.

29           6. Any provision in a declaration that purports to specify a  
30 maximum rate of assessments, or a limitation on the amount an  
31 assessment may be increased, is hereby declared void as contrary to  
32 public policy.

449.316. 1. The association has a continuing lien on a unit for  
2 any assessment levied against that unit or fines imposed against its  
3 unit 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 pursuant to chapter 443. Fees, charges,  
6 late charges, fines, and interest charged pursuant to subdivisions (10)  
7 to (14) of subsection 1 of section 449.302 are enforceable as assessments  
8 pursuant to this section. If an assessment is payable in installments,  
9 the full amount of the assessment is a lien from the time the first  
10 installment thereof becomes due.

11           2. A lien pursuant to this section is prior to all other liens and  
12 encumbrances on a unit and may be foreclosed through judicial or  
13 nonjudicial proceeding but junior to:

14           (1) Real estate taxes and other governmental assessments or  
15 charges against the unit;

16           (2) Any deed of trust or encumbrances recorded before the  
17 declaration; and

18           (3) If a unit is secured by a deed of trust:

19           (a) The association's lien is superior to the deed of trust in an  
20 amount not to exceed six months of the delinquent common expense  
21 assessments based on the periodic budget adopted by the association  
22 pursuant to subsection 1 of section 449.323 which would have become  
23 due in the absence of acceleration during the six months immediately  
24 preceding the date of filing of a petition to enforce the association's  
25 lien, or the date of sale by the holder of a mortgage or deed of trust;  
26 and

27           (b) The association's lien is junior to the deed of trust in any  
28 amount in excess of six months of the delinquent common expense  
29 assessments based on the periodic budget adopted by the association  
30 pursuant to subsection 1 of section 449.323.

31           **3. If the association forecloses its lien under this section**  
32 **nonjudicially pursuant to chapter 443, the association shall not be**  
33 **entitled to the lien priority provided for under subsection 2 of this**  
34 **section.**

35           **4. Subsections 1, 2, and 3 of this section do not affect the priority**  
36 **of mechanics' or materialmen's liens, or the priority of liens for other**  
37 **assessments made by the association. The lien pursuant to this section**  
38 **is not subject to the provisions of section 513.475.**

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

42           **6. Recording of the declaration constitutes record notice and**  
43 **perfection of the lien. No further recordation of any claim of lien for**  
44 **assessment pursuant to this section is required. If the association**  
45 **records a lien against a unit, it shall contain the contact information**  
46 **for the association including name, mailing address, and telephone**  
47 **number.**

48           **7. A lien under this section shall not include assessments in**  
49 **excess of five years unless proceedings to enforce the lien are**  
50 **instituted within five years after the full amount of the assessments**  
51 **becomes due. A unit owner shall remain personally liable for such**  
52 **assessments not included in the lien.**

53           **8. This section shall not prohibit actions to recover sums for**  
54 **which subsection 1 of this section creates a lien, or prohibit an**  
55 **association from taking a deed in lieu of foreclosure.**

56           **9. The association shall be entitled to recover from the unit**  
57 **owner any costs and reasonable attorneys' fees incurred in connection**  
58 **with the collection of delinquent assessments. A judgment or decree in**  
59 **any action brought pursuant to this section shall include costs and**  
60 **reasonable attorney's fees for the prevailing party. Attorney's fees and**  
61 **costs shall not be included in the association's lien under subdivision**  
62 **(3) of subsection 2 of this section.**

63           **10. The association shall furnish to a unit owner, an agent of the**  
64 **unit owner, or any holder of a deed of trust, upon written request, a**  
65 **statement setting forth the amount of unpaid assessments against the**  
66 **unit owner's unit. The statement shall be furnished within ten business**  
67 **days after receipt of the request and is binding on the association, the**

68 executive board, and every unit owner unless and to the extent known  
69 by the recipient to be false.

70 11. If a unit is occupied by a tenant and the unit owner is  
71 delinquent in payment of assessments in excess of sixty days, the  
72 association may demand payment of subsequent rental payments until  
73 the unit owner is no longer delinquent, the association releases the  
74 tenant or the tenant is no longer in possession of the unit. The demand  
75 to the tenant shall be in writing, with a copy to the unit owner, sent via  
76 first-class United States mail, postage pre-paid, or hand delivery. A  
77 tenant is immune from any claim by the unit owner related to the rent  
78 timely paid to the association after the association has made written  
79 demand. If the tenant fails to make payment to the association, the  
80 association may issue notice and evict under chapter 534. The tenant  
81 does not, by virtue of payment, have any rights of a unit owner to vote  
82 in an election or examine the books and records of the association.

449.318. 1. The association shall keep financial records  
2 sufficiently detailed to enable the association to comply with section  
3 449.409. All financial and other records shall be made reasonably  
4 available for examination by any unit owner and his authorized agents.

5 2. The association shall maintain a membership roster of unit  
6 owners excluding telephone numbers and electronic mail addresses  
7 unless the unit owner has expressly granted such disclosure.

8 3. Subject to subsections 4 and 5 of this section, all records  
9 retained by an association shall be available for examination and  
10 copying by a unit owner or the owner's authorized agent upon written  
11 request stating the purpose for examination of the records. The board  
12 shall provide a schedule to the unit owner within five business days  
13 when the unit owner shall have the opportunity for examination and  
14 copying during reasonable business hours or at a mutually convenient  
15 location and time.

16 4. Records retained by an association may be withheld from  
17 inspection and copying to the extent that they concern:

18 (1) Personnel, salary, and medical records relating to specific  
19 individuals;

20 (2) Contracts, leases, and other commercial transactions to  
21 purchase or obtain goods or services currently being negotiated;

22 (3) Existing or potential litigation or mediation, arbitration, or

23 administrative proceedings;

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

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

30 (6) Information the disclosure of which would violate law other  
31 than sections 449.101 to 449.417; or

32 (7) Information relating to insurance coverage except for the  
33 declaration of coverage.

34 5. An association may charge a reasonable fee for providing  
35 copies of any records under this section and for the actual cost of  
36 personnel assisting or supervising the unit owner's inspection.

37 6. A right to copy records under this section includes the right  
38 to receive copies by photocopying or other means, including copies  
39 through an electronic transmission if available upon request by the  
40 unit owner.

41 7. An association is not obligated to compile, format, or  
42 synthesize information.

43 8. Information provided pursuant to this section may not be used  
44 for commercial purposes.

449.323. 1. The executive board, at least annually, shall adopt a  
2 proposed budget for the planned community for consideration by the  
3 unit owners. Not later than thirty days after adoption of a proposed  
4 budget, the executive board shall provide to all the unit owners a copy  
5 of the budget, including any reserves, and a statement of the basis on  
6 which any reserves are calculated and funded. Simultaneously, the  
7 board shall set a date not less than fourteen days or more than thirty  
8 days after providing the summary for a meeting of the unit owners to  
9 consider ratification of the budget. Unless at that meeting a majority  
10 of all unit owners or any larger number specified in the declaration  
11 reject the budget, the budget is ratified, whether or not a quorum is  
12 present. If a proposed budget is rejected, the current budget continues  
13 until unit owners ratify a subsequent budget.

14 2. The executive board, at any time, may adopt a special  
15 assessment or adjusted budget so long as the increase is not more than

16 fifteen percent of the current budget. If the increase is more than  
17 fifteen percent of the current budget, the special assessment or  
18 adjusted budget is effective only if the executive board follows the  
19 procedures for ratification of a budget described in subsection 1 of this  
20 section and the unit owners do not reject the proposed assessment.

21 3. If the executive board determines that a special assessment is  
22 necessary to respond to an emergency to the health or safety of  
23 occupants:

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

26 (2) Notice of the emergency assessment shall be provided  
27 promptly to all unit owners; and

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

30 4. An association shall maintain bank accounts in its own  
31 name. Reserves of the association shall be maintained in a separate  
32 account and only the executive board shall be authorized to expend or  
33 transfer funds from such account. No funds of the association shall be  
34 co-mingled with any other association, a board member, or any agent,  
35 vendor or service provider of the association.

449.409. 1. After the original sale of a unit, a unit owner shall  
2 furnish to a purchaser before execution of any contract for sale of unit,  
3 or otherwise before conveyance, a resale certificate containing a copy  
4 of the declaration, other than the plats and plans, the bylaws, and rules  
5 or regulations of the association. Such resale certificate shall disclose:

6 (1) The effect on the proposed disposition of any right of first  
7 refusal or other restraint on the free alienability of the unit;

8 (2) The amount of the current assessment and any unpaid  
9 assessments or other charges currently due and payable from the  
10 selling unit owner;

11 (3) Any other fees payable by unit owners to the association;

12 (4) Whether a reserve study on the long-term repair and  
13 replacement of the common elements has been completed and, if so, the  
14 date;

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

17 (6) The most recently prepared balance sheet and income and

18 expenses statement, if any, of the association;

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

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

23 (9) A statement describing any insurance coverage for the  
24 benefit of unit owners;

25 (10) A statement as to whether the executive board has  
26 knowledge that any alterations or improvements to the unit or limited  
27 common elements assigned thereto violate any provision of the  
28 declaration; and

29 (11) Other than projects included in the association's budget or  
30 reserves, a description and estimated cost of any project that is  
31 anticipated within the current fiscal year or next two succeeding fiscal  
32 years in excess of ten percent of the association's current budget.

33 2. Within ten days after a request by a unit owner, the  
34 association shall furnish a certificate containing the information  
35 necessary to enable the unit owner to comply with this section. A unit  
36 owner or a licensed real estate agent acting on behalf of a unit owner  
37 providing a certificate pursuant to subsection 1 of this section is not  
38 liable to the purchaser for any erroneous information provided by the  
39 association and included in the certificate.

40 3. A purchaser is not liable for any unpaid assessment or fee  
41 greater than the amount set forth in the certificate prepared by the  
42 association.

43 4. A unit owner is not liable to a purchaser for the failure or  
44 delay of the association to provide the certificate in a timely manner,  
45 but the purchase contract is voidable by the purchaser until the  
46 certificate has been provided and for five days thereafter or until  
47 conveyance, whichever first occurs.

449.417. 1. If a declarant or any other person subject to sections  
2 449.101 to 449.417 fails to comply with any provision therein or any  
3 provision of the declaration or bylaws, any person or class of persons  
4 adversely affected by such failure to comply has a claim for  
5 appropriate relief. The court may award reasonable attorney's fees and  
6 costs to the prevailing party.

7 2. The remedies provided by sections 449.101 to 449.417 shall be

8 **liberally administered to the end that the aggrieved party is put in as**  
9 **good a position as if the other party had fully performed.**

✓

Unofficial

Bill

Copy