

FIRST REGULAR SESSION

# HOUSE BILL NO. 1089

## 102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRIST.

1969H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To amend chapter 355, RSMo, by adding thereto twenty-five new sections relating to homeowners' associations.

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

Section A. Chapter 355, RSMo, is amended by adding thereto twenty-five new sections, to be known as sections 355.940, 355.945, 355.950, 355.955, 355.960, 355.965, 355.970, 355.975, 355.980, 355.985, 355.990, 355.995, 355.1000, 355.1005, 355.1010, 355.1015, 355.1020, 355.1025, 355.1030, 355.1035, 355.1040, 355.1045, 355.1050, 355.1055, and 355.1060, to read as follows:

**355.940. Sections 355.940 to 355.1060 may be cited as the "Missouri Homeowners' Bill of Rights".**

**355.945. 1. Sections 355.940 to 355.1060 shall apply to any planned community created in this state after December 31, 2023.**

**2. Sections 355.950, 355.985, 355.990, 355.995, 355.1010, 355.1015, 355.1020, 355.1025, 355.1030, 355.1035, 355.1040, 355.1050, 355.1055, and 355.1060 and subsections 2 to 5 of section 355.1005 shall apply to all planned communities created in this state before January 1, 2024, but those sections apply only with respect to events and circumstances occurring after December 31, 2023, and do not invalidate existing provisions of the declaration, bylaws, or plats of those planned communities.**

**355.950. As used in sections 355.940 to 355.1060, the following terms mean:**

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

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 4           (2) "Assessment", the sum attributable to each unit and due to the association  
5 according to the budget adopted under section 355.1050;
- 6           (3) "Association", the unit owners' association;
- 7           (4) "Bylaws", the written instruments, however denominated, that contain the  
8 procedures for the conduct of the affairs of the association, regardless of the form in  
9 which the association is organized, including any amendments to the instrument;
- 10          (5) "Common elements", any real estate within a planned community that is  
11 owned or leased by the association other than a unit;
- 12          (6) "Common expense liability", the liability for common expenses allocated to  
13 each unit;
- 14          (7) "Common expenses", expenditures made by, or financial liabilities of, the  
15 association, together with any allocations to reserves;
- 16          (8) "Declarant", a person or group of persons acting in concert that:
- 17           (a) As part of a common promotional plan, offers to dispose of the interest of the  
18 person or group of persons in a unit not previously disposed of; or
- 19           (b) Reserves or succeeds to any declarant right;
- 20          (9) "Declaration", the instrument, however denominated, that creates a planned  
21 community, including any amendments to that instrument;
- 22          (10) "Development rights", any right or combination of rights reserved by a  
23 declarant in the declaration;
- 24          (11) "Executive board", the body, regardless of name, designated in the  
25 declaration or bylaws that has power to act on behalf of the association;
- 26          (12) "Limited common element", a portion of the common elements allocated  
27 for the exclusive use of one or more but fewer than all of the units;
- 28          (13) "Party wall", each wall, including, but not limited to, walls separating  
29 adjoining attached units, fence walls, and common garage walls, that is built as a part of  
30 the original construction of a unit and placed on the dividing line between the units;
- 31          (14) "Person", an individual, corporation, business trust, estate, trust,  
32 partnership, limited liability company, association, joint venture, public corporation,  
33 government or governmental subdivision, agency, or instrumentality, or any other legal  
34 or commercial entity. In the case of a land trust, the term "person" means the  
35 beneficiary of the trust rather than the trust or the trustee;
- 36          (15) "Planned community", real property described in a declaration that sets  
37 forth the obligations and duties of the association and the unit owner, which shall  
38 include the unit owner's obligation to pay assessments for upkeep of the common  
39 elements. For the purposes of sections 355.940 to 355.1060, neither a cooperative nor a

40 condominium is a planned community, but real estate comprising a condominium or  
41 cooperative may be part of a planned community;

42 (16) "Record", if used as a noun, information that is inscribed on a tangible  
43 medium or that is stored in an electronic or other medium and is retrievable in  
44 perceivable form;

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

46 (18) "Rule", a policy, guideline, procedure, or regulation of an association,  
47 however denominated, that is not set forth in the declaration or bylaws and that governs  
48 the conduct of persons or the use or appearance of property;

49 (19) "Unit", a physical portion of the planned community designated for  
50 separate ownership or occupancy, such as a lot as depicted on the plats or plans  
51 recorded with the declaration;

52 (20) "Unit owner", a declarant or other person who owns a unit or a lessee of a  
53 unit in a leasehold planned community whose lease expires simultaneously with any  
54 lease the expiration or termination of which will remove the unit from the planned  
55 community but does not include a person having an interest in a unit solely as security  
56 for an obligation. Ownership of a unit does not include a leasehold interest of less than  
57 twenty years in a unit, including renewal options.

355.955. Except as expressly provided in sections 355.940 to 355.1060, the effect  
2 of sections 355.940 to 355.1060 shall not be varied by agreement, and rights conferred by  
3 sections 355.940 to 355.1060 shall not be waived.

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

355.965. The principles of law and equity, including the law of corporations, any  
2 other form of organization authorized by the law of this state, and unincorporated  
3 associations; the law of real estate; and the law relative to capacity to contract, principal  
4 and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion,  
5 mistake, receivership, substantial performance, or other validating or invalidating cause  
6 supplement the provisions of sections 355.940 to 355.1060, except to the extent  
7 inconsistent with sections 355.940 to 355.1060. If there is a conflict between sections  
8 355.940 to 355.1060 and other laws of this state, sections 355.940 to 355.1060 shall  
9 prevail.

355.970. Sections 355.940 to 355.1060 modify, limit, and supersede the federal  
2 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et  
3 seq., but do not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section

4 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b)  
5 of that act, 15 U.S.C. Section 7003(b).

355.975. Common elements of a planned community are not subject to adverse  
2 possession or implied easements. If the property rights of a unit within a planned  
3 community are determined by a court of competent jurisdiction to be changed by  
4 adverse possession or implied easements, such adjudication shall not change, limit, or  
5 hinder the application of the provisions of the declaration to the unit.

355.980. 1. For a planned community created after December 31, 2023, the  
2 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 community is  
5 located;
- 6 (3) A legally sufficient description of the real estate included in the planned  
7 community;
- 8 (4) A statement of the number of units that may be created, and a specific period  
9 of time in which such units may be created;
- 10 (5) A description of the boundaries of each unit created by the declaration,  
11 including the unit's identifying number as provided on a plat;
- 12 (6) A description of any limited common elements and any real property that is  
13 or shall become common elements;
- 14 (7) An allocation to each unit a fraction or percentage of the common expenses of  
15 the association and a portion of the votes in the association;
- 16 (8) The formula or method used to establish allocations of interests. Unless the  
17 declaration otherwise provides, each unit shall have equal allocated interests. Such  
18 allocations shall not discriminate in favor of units owned by the declarant or an affiliate  
19 of the declarant;
- 20 (9) Any method of termination of the planned community;
- 21 (10) Any restrictions on alienation of units, including leasing, or any  
22 administrative fee or charge that may be imposed upon a voluntary resale of a unit;
- 23 (11) Any restriction or requirement on construction and design criteria and  
24 aesthetic standards;
- 25 (12) Any other restrictions and covenants the declarant or the association  
26 considers appropriate to preserve the planned community, including restrictions on use  
27 or the number or other qualifications of persons who may occupy units;
- 28 (13) Any restriction on use such as single-family residential, commercial,  
29 agricultural, or industrial;

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

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

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

39           3. A declarant shall not be liable for a declaration that fails to comply with this  
40 section, which may be cured by the executive board in accordance with subsection 4 of  
41 section 355.985.

          355.985. 1. For a planned community created after December 31, 2023, a  
2 declaration, plat, and plans shall be amended only by a vote or agreement of unit owners  
3 to which at least sixty-seven percent of the votes in the association are allocated except  
4 for amendments authorized under subsection 4 of this section. A unanimous vote of the  
5 unit owners is required to amend any declaration to change the allocated interest of a  
6 unit or the requirement that units shall be used solely for residential purposes. A  
7 unanimous vote of the unit owners is not required to change or add a restriction that  
8 may be more burdensome.

9           2. For a planned community created before January 1, 2024, any provision in a  
10 declaration that purports to specify a percentage larger than sixty-seven percent of the  
11 votes in the association to amend the declaration is hereby declared void as contrary to  
12 public policy, and until amended, such provision shall be deemed to specify a percentage  
13 of sixty-seven percent, except that unanimous consent of unit owners shall be required  
14 to amend any declaration to change the allocated interest of a unit or the requirement  
15 that units shall be used solely for residential purposes. For any planned community  
16 created before January 1, 2024, unanimous consent is not required to change or add a  
17 restriction that may be more burdensome.

18           3. If an amendment is proposed and an insufficient number of votes are obtained  
19 to decide the question within ninety days of mailing of the amendment to the unit  
20 owners, the declaration may be amended if the association provides a notice to all unit  
21 owners by mail, with a copy of the proposed amendment enclosed, that the proposed  
22 amendment will be deemed approved by that unit owner unless the unit owner submits  
23 a vote within sixty days of the date of the notice.

24           4. Notwithstanding anything to the contrary in sections 355.940 to 355.1060, the  
25 executive board, or the declarant during the period of declarant control, is authorized to

26 amend a declaration and bylaws to correct drafting or technical errors or to bring the  
27 planned community into compliance with conditions imposed by lenders providing  
28 government-insured or guaranteed loans without a vote by the unit owners.

29 5. No action to challenge the validity of an amendment to the declaration shall be  
30 brought more than one year after the amendment to the declaration is recorded.

31 6. A copy of any amendment to the declaration or bylaws shall be provided to  
32 the unit owners.

33 7. Consent of the declarant is required for any amendment to the declaration or  
34 bylaws that would impair any rights reserved by the declarant in the declaration.

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

8 2. An association created before January 1, 2024, after transfer of control by the  
9 declarant, shall organize the association as a mutual benefit nonprofit corporation  
10 under this chapter.

355.995. 1. The association, even if unincorporated or its corporate status has  
2 been administratively dissolved, shall have the authority to:

- 3 (1) Adopt and amend bylaws and adopt and amend rules;
- 4 (2) Adopt and amend budgets in accordance with section 355.1050;
- 5 (3) Hire and terminate managing agents and other employees, agents, and  
6 independent contractors, except that no contract with a managing agent or employee  
7 shall have a term in excess of three years;
- 8 (4) Institute, defend, or intervene in litigation or administrative proceedings in  
9 its own name on behalf of itself or two or more unit owners on matters affecting the  
10 planned community;
- 11 (5) Make contracts and incur liabilities;
- 12 (6) Regulate the use and provide maintenance, repair, replacement,  
13 improvement, and modification of common elements;
- 14 (7) Acquire, hold, encumber, and convey in its own name any right, title, or  
15 interest to real or personal property;
- 16 (8) Grant easements, leases, licenses, and concessions through or over the  
17 common elements, and to release the same;

18           (9) Impose and receive any payments, fees, or charges for the use, rental, or  
19 operation of the common elements, other than limited common elements and services  
20 provided to unit owners;

21           (10) Impose charges for late payment;

22           (11) Levy interest on any past-due common expense assessment or installment  
23 thereof bearing interest at the rate established by the association not to exceed eighteen  
24 percent per annum;

25           (12) Levy reasonable fines and withdraw the right to use any recreational  
26 facilities for violations of the declaration, bylaws, and rules after notice and opportunity  
27 to be heard;

28           (13) Impose reasonable charges for the preparation and recordation of  
29 amendments to the declaration or statements of unpaid assessments;

30           (14) Borrow money and assign its rights to future income as security, including  
31 the right to receive common expense assessments;

32           (15) Limit or prohibit leasing, provided that if a prohibition shall require an  
33 amendment to the declaration such amendment and prohibition shall be effective  
34 against those owners of record only after the effective date and recording of the  
35 amendment;

36           (16) Exercise any other power conferred by the declaration or bylaws;

37           (17) Impose a reasonable administrative charge for complying with section  
38 355.1055 when a unit is conveyed except for units conveyed at an involuntary sale. Any  
39 such fee shall not be based upon the percentage of the sale price;

40           (18) Interpret the provisions of the declaration and bylaws;

41           (19) Without a vote of the unit owners, enter into any loan, program, or other  
42 emergency response assistance so long as an emergency has been declared by an  
43 applicable political subdivision of the state or the federal government; and

44           (20) Exercise all other powers that may be exercised in this state by a nonprofit  
45 corporation.

46           2. The executive board may determine whether to take enforcement action by  
47 exercising the association's power to impose sanctions or commencing an action for a  
48 violation of sections 355.940 to 355.1060 or the declaration, bylaws, and rules, including  
49 whether to compromise any claim for unpaid assessments or other claim made by or  
50 against it. The executive board does not have a duty to take enforcement action if it  
51 determines that, under the facts and circumstances presented:

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

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

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

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

60           3. The executive board's decision under subsection 2 of this section to not pursue  
61 enforcement under one set of circumstances does not prevent the executive board from  
62 taking enforcement action under another set of circumstances, but the executive board  
63 shall not be arbitrary or capricious in taking enforcement action.

          355.1000. 1. The executive board may act in all instances on behalf of the  
2 association. Officers and members of the executive board shall exercise ordinary and  
3 reasonable care for nonbusiness decisions and shall exercise business judgment for  
4 business decisions.

5           2. For a declaration recorded after December 31, 2023, the declaration shall  
6 provide for a period of declarant control of the association, during which a declarant or  
7 persons designated by the declarant may appoint and remove the officers and members  
8 of the executive board.

9           3. Expiration or termination of the period of declarant control shall not affect or  
10 impair the declarant's exercise of any other rights reserved in the declaration.

11           4. A declarant may voluntarily surrender the right to appoint and remove  
12 officers and members of the executive board before the period of declarant control ends.  
13 In that event, the declarant may require declarant approval for specified actions of the  
14 association or executive board as described in a recorded instrument executed by the  
15 declarant before such specified actions become effective.

16           5. The executive board shall not:

17           (1) Amend the declaration except as provided in subsection 4 of section 355.985;

18           (2) Amend the bylaws except as provided in subsection 4 of section 355.985;

19           (3) Terminate the planned community;

20           (4) Elect members to the executive board. The board may fill vacancies by  
21 appointment on the executive board for the unexpired portion of any term or, if earlier,  
22 until the next regularly scheduled election of executive board members; or

23           (5) Determine the qualifications, powers, duties, or terms of office of the  
24 executive board.

          355.1005. 1. For a planned community created after December 31, 2023, the  
2 bylaws of the association shall:

3           (1) Provide the number of members of the executive board and the titles of the  
4 officers of the executive board, which shall not be fewer than three, with terms  
5 staggered so that at least one member of the executive board is elected annually;

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

8           (3) Specify the qualifications, powers and duties, terms of office, and manner of  
9 electing and removing executive board members and officers and filling vacancies. A  
10 member of the executive board shall be required to be current on payment of  
11 assessments and other charges imposed under the declaration or bylaws; and

12           (4) Provide for any matter required by law of this state other than sections  
13 355.940 to 355.1060 to appear in the bylaws of organizations of the same type as the  
14 association.

15           2. Bylaws may be amended by a majority vote of the unit owners. Consent of the  
16 declarant is required for any amendment to the bylaws that would impair any rights  
17 reserved by the declarant in the declaration.

18           3. If an amendment to the bylaws is proposed and an insufficient number of  
19 votes are obtained to decide the question within ninety days of mailing of the  
20 amendment to the unit owners, the bylaws may be amended if the association provides a  
21 notice to all unit owners by mail, with a copy of the proposed amendment enclosed, that  
22 the proposed amendment will be deemed approved by that unit owner unless the unit  
23 owner submits a vote within sixty days of the date of the notice.

24           4. No action to challenge the validity of an amendment to the bylaws shall be  
25 brought more than six months after the amendment becomes effective.

26           5. The declarant shall not be liable for bylaws that fail to comply with this  
27 section, which may be cured in accordance with subsection 4 of section 355.985.

          355.1010. 1. After election of a unit owner to the executive board, the association  
2 shall:

3           (1) Hold a meeting of unit owners at least annually at a time, date, and place  
4 stated in or fixed in accordance with the bylaws;

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

7           (a) Such meeting is approved by the executive board; or

8           (b) Twenty percent of the unit owners, or any lower percentage specified in the  
9 bylaws, of the votes of the association request in writing that the secretary call the  
10 meeting. If the association does not notify the unit owners of a special meeting within  
11 thirty days after the requisite number or percentage of unit owners request the  
12 secretary to do so, the requesting members may directly notify all the unit owners of the

13 meeting. Only matters described in the meeting notice required by subdivision (3) of  
14 this subsection shall be considered at a special meeting;

15 (3) Notify unit owners of the time, date, and place of each annual and special  
16 association meeting not less than fifteen days or more than sixty days before the meeting  
17 date. The minimum time to give notice may be reduced or waived for a meeting called  
18 to address an emergency. Notice shall be sent in accordance with the bylaws or by first-  
19 class mail, postage pre-paid, to the unit owner's last known address, if different than the  
20 unit address, and the unit. Unless a unit owner does not consent, notices may be sent by  
21 electronic or other means. The notice shall contain the time, date, and place of the  
22 meeting and the items on the agenda, including:

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

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

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

27 (4) Give unit owners reasonable opportunity at any meeting to comment  
28 regarding any matter affecting the planned community or the association; and

29 (5) Unless limited by the declaration or bylaws, be allowed to conduct meetings  
30 of unit owners by telephone, video, or other conferencing process as long as the  
31 alternative process is consistent with the provisions of subsection 7 of this section.

32 2. Meetings of the executive board and committees of the association authorized  
33 to act for the association shall be open to the unit owners except during executive  
34 sessions. No final vote or action shall be taken during an executive session. An  
35 executive session shall be held only to:

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

37 (2) Discuss existing or potential litigation or mediation, arbitration, or  
38 administrative proceedings;

39 (3) Discuss labor or employee matters;

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

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

46 3. For purposes of this section, a gathering of board members at which the board  
47 members do not conduct association business is not a meeting of the executive board.  
48 The executive board and its members shall not use incidental, electronic

49 communications, social gatherings of board members, or any other method to evade the  
50 open meeting requirements of this section.

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

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

59 6. If any materials are distributed to the executive board before the meeting, the  
60 executive board at the same time shall make copies of those materials reasonably  
61 available to unit owners, except that the board is not required to make available copies  
62 of unapproved minutes or materials that are to be considered in executive session.

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

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

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

70 8. Instead of meeting, the executive board may act by unanimous consent as  
71 documented in a record authenticated by all its members. The secretary promptly shall  
72 give notice to all unit owners of any action taken by unanimous consent. After  
73 termination of the period of declarant control, the executive board may act by  
74 unanimous consent only to undertake ministerial actions or to implement actions  
75 previously approved or authorized at a meeting of the executive board.

76 9. Even if an action by the executive board is not in compliance with this section,  
77 it is valid unless set aside by a court or rescinded by the executive board or the  
78 association. A challenge to the validity of an action of the executive board for failure to  
79 comply with this section shall not be brought more than sixty days after the minutes of  
80 the executive board of the meeting at which the action was taken are approved or the  
81 record of that action is distributed to unit owners, whichever is later.

82 10. The approved minutes shall be the official record of the executive board and  
83 the association. The executive board may provide that no video or other recording of  
84 any meeting shall be made unless prior written consent of the executive board is  
85 obtained.

355.1015. 1. Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent of the votes in the association:

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

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

(3) Are present by any combination of subdivisions (1) and (2) of this subsection.

2. If an election of the executive board is not held because of a lack of quorum of the members, the executive board shall call a special meeting of the association to conduct the election with such special meeting requiring a quorum of ten percent of the votes in the association. Thereafter, if an election of the executive board is not held because of a lack of quorum of the members, the executive board shall call a special meeting of the association to conduct the election with no quorum requirement.

3. If an election of the executive board is not held because of a lack of quorum for three consecutive years, the executive board shall execute and record an amendment reducing quorum to twenty percent of the votes in the association.

4. Except for amendments to the declaration or bylaws, no action to challenge an election, or any other matter voted upon by the unit owners or the executive board, shall be brought more than thirty days from the date of the vote.

5. To ensure that the executive board is not vacated in whole or in part, the term of a member of the executive board expires upon the election of a replacement. Any provision in a declaration or bylaw that purports to specify a date when a term of a member of the executive board expires is hereby declared void as contrary to public policy.

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

355.1020. 1. Unless prohibited or limited by the declaration or bylaws, unit owners may cast the vote allocated to their unit at a meeting in person or by an absentee ballot in accordance with subdivision (4) of subsection 2 of this section or, when a vote is conducted without a meeting, by electronic or paper ballot in accordance with subsection 3 of this section.

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

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

10           (2) If only one of several owners of a unit is present, that owner is entitled to cast  
11 all the votes allocated to that unit. If more than one of the owners is present, the votes  
12 allocated to that unit shall be cast only in accordance with the agreement of a majority  
13 in interest of the owners of that unit, unless the declaration expressly provides  
14 otherwise. There is majority agreement if any one of the owners casts the votes  
15 allocated to the unit without protest being made promptly to the person presiding over  
16 the meeting by any of the other owners of the unit;

17           (3) Unless a greater number or fraction of the votes in the association is required  
18 by sections 355.940 to 355.1060 or the declaration, a majority of the votes cast  
19 determines the outcome of any action of the association;

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

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

27           (6) Quorum is required and a majority of the votes present cast will decide the  
28 matter unless a different percentage is required under sections 355.940 to 355.1060, the  
29 declaration, or the bylaws.

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

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

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

36           (3) The ballot shall set forth each proposed action and provide an opportunity to  
37 vote for or against the action;

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

39           (a) Indicate the number of responses needed to meet the quorum requirements;

40           (b) State the percent of votes necessary to approve each matter other than  
41 election of directors;

42 (c) Specify the time and date by which a ballot shall be delivered to the  
43 association to be counted, which time and date shall not be fewer than three days after  
44 the date the association delivers the ballot; and

45 (d) Describe the time, date, and manner by which unit owners wishing to deliver  
46 information to all unit owners regarding the subject of the vote may do so;

47 (5) Except as otherwise provided in the declaration or bylaws, a ballot is not  
48 revoked after delivery to the association by death or disability or attempted revocation  
49 by the unit owner who cast that vote; and

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

53 4. Unless contrary to the declaration or bylaws, the following requirements  
54 apply with respect to proxy voting:

55 (1) Votes allocated to a unit may be cast in accordance with a directed or  
56 undirected proxy duly executed by a unit owner;

57 (2) If a unit is owned by more than one person, each owner of the unit may vote  
58 or register protest to the casting of votes by the other owners of the unit through a duly  
59 executed proxy;

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

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

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

65 (6) A person shall not cast undirected proxies representing more than four of the  
66 votes in the association excluding that person's vote.

67 5. Unit owners shall also be given notice of all meetings at which lessees are  
68 entitled to vote.

355.1025. 1. Commencing not later than the time of the first conveyance of a  
2 unit to a person other than a declarant, the association shall maintain, to the extent  
3 reasonably available and subject to reasonable deductibles:

4 (1) Property insurance on the common elements and on property that shall  
5 become common elements, insuring risks of direct physical loss commonly insured  
6 against, which insurance, after application of any deductibles, shall be not less than  
7 eighty percent of the replacement cost of the insured property at the time the insurance  
8 is purchased and at each renewal date, exclusive of land, excavations, foundations, and  
9 other items normally excluded from property policies. For the units in any building

10 with a party wall, property insurance shall include the units but need not include  
11 improvements and betterments installed after the date of original sale to a unit owner;

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

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

18 (4) Directors' and officers' liability insurance, including any managing agent as  
19 an additional insured.

20 2. If insurance described in subsection 1 of this section is not reasonably  
21 available, the association shall promptly provide notice of that fact to all unit owners.  
22 The declaration may require the association to carry any other insurance, and the  
23 association may carry other insurance it considers appropriate to protect the association  
24 or the unit owners.

25 3. Insurance policies carried in accordance with subsection 1 of this section shall  
26 provide that:

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

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

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

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

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

42 4. Any loss covered by the property policy under subdivision (1) of subsection 1  
43 of this section shall be adjusted with the association, but the insurance proceeds for that  
44 loss are payable to any insurance trustee designated for that purpose, or otherwise to the  
45 association. The policy shall not name mortgagees or holders of any security interest.  
46 The insurance trustee or the association shall hold any insurance proceeds in trust for

47 the association, unit owners, and lien holders as their interests may appear. Subject to  
48 subsections 7 and 8 of this section, the proceeds shall be disbursed first for repair or  
49 replacement of the damaged property. The association, unit owners, and lien holders  
50 are not entitled to receive payment of any portion of the proceeds unless there is a  
51 surplus of proceeds after the property has been completely repaired or replaced or the  
52 planned community is terminated.

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

57 (1) Until thirty days after notice of the proposed cancellation or nonrenewal has  
58 been mailed to the association, each unit owner, and each holder of a security interest to  
59 whom a certificate or memoranda of insurance has been issued at their respective last  
60 known address; or

61 (2) Until ten days after notice of the proposed cancellation or nonrenewal  
62 because of nonpayment has been mailed to the association, each unit owner, and each  
63 holder of a security interest to whom a certificate or memoranda of insurance has been  
64 issued at their respective last known address.

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

68 (1) The planned community is terminated;

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

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

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

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

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

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

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

86           8. If the unit owners vote not to rebuild any unit, that unit's allocated interests  
87 are automatically reallocated upon the vote as if the unit had been condemned, and the  
88 association shall promptly prepare, execute, and record an amendment to the  
89 declaration reflecting the reallocation.

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

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

355.1030. 1. All common expenses shall be assessed against all units in  
2 accordance with the allocations set forth in the declaration, subject to subsection 4 of  
3 this section. The board may allocate a common expense to fewer than all the units if the  
4 declaration states:

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

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

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

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

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

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

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

**355.1035. 1. The association has a continuing lien on a unit for any assessment**  
2 **levied against that unit or fines imposed against its unit owner from the time the**  
3 **assessment or fine becomes due. The association's lien may be foreclosed in like manner**  
4 **as a mortgage on real estate or a power of sale under chapter 443. Fees, charges, late**  
5 **charges, fines, and interest charged under subdivisions (12) to (15) of subsection 1 of**  
6 **section 355.995 are enforceable as assessments under this section. If an assessment is**  
7 **payable in installments, the full amount of the assessment is a lien from the time the first**  
8 **installment thereof becomes due.**

9           **2. A lien under this section is prior to all other liens and encumbrances on a unit**  
10 **and may be foreclosed through judicial or nonjudicial proceeding but junior to:**

11           **(1) Real estate taxes and other governmental assessments or charges against the**  
12 **unit;**

13           **(2) Any deed of trust or encumbrances recorded before the declaration; and**

14           **(3) If a unit is secured by a deed of trust, subject to the terms of the declaration.**

15           **3. This section does not affect the priority of mechanics' or materialmen's liens**  
16 **or the priority of liens for other assessments made by the association. The lien under**  
17 **this section is not subject to the provisions of section 513.475.**

18           **4. Unless the declaration provides otherwise, if two or more associations have**  
19 **liens for assessments created at any time on the same real estate, those liens have equal**  
20 **priority.**

21           **5. Recording of the declaration constitutes record notice and perfection of the**  
22 **lien. No further recordation of any claim of lien for assessment under this section is**  
23 **required. If the association records a lien against a unit, it shall contain the contact**  
24 **information for the association, including name, mailing address, and telephone**  
25 **number.**

26           **6. A lien under this section shall not include assessments in excess of ten years**  
27 **unless proceedings to enforce the lien are instituted within ten years after the full**  
28 **amount of the assessments becomes due. A unit owner shall remain personally liable for**  
29 **such assessments not included in the lien.**

30           **7. This section shall not prohibit actions to recover sums for which subsection 1**  
31 **of this section creates a lien or prohibit an association from taking a deed in lieu of**  
32 **foreclosure.**

33           **8. The association shall be entitled to recover from the unit owner any costs and**  
34 **reasonable attorney's fees incurred in connection with the collection of delinquent**

35 assessments. A judgment or decree in any action brought under this section shall  
36 include costs and reasonable attorney's fees for the prevailing party, with the amount of  
37 the unpaid assessments not to be considered by the court in determining the  
38 reasonableness of such attorney's fees and costs. Upon request of any party, the  
39 court shall provide its basis for its determination of the award of attorney's fees and  
40 costs. Any application for execution upon a judgment shall include any postjudgment  
41 attorney's fees and costs incurred, which, unless otherwise determined by the court by  
42 motion submitted by the owner within thirty days of the date of service of such  
43 application, shall be recoverable.

44 9. The association shall furnish to a unit owner, an agent of the unit owner, or  
45 any holder of a deed of trust or mortgage, upon written request, a statement setting  
46 forth the amount of unpaid assessments against the unit owner's unit. The statement  
47 shall be furnished within ten business days after receipt of the request and is binding on  
48 the association, the executive board, and every unit owner unless and to the extent  
49 known by the recipient to be false.

50 10. An association is not subject to the limitation on the number of small claims  
51 petitions that may be filed as provided in subdivision (2) of subsection 1 of section  
52 482.330, and any judgment thereafter entered, so long as the unit owner was personally  
53 served, shall be enforceable as a judgment entered by an associate circuit court under  
54 chapter 517.

55 11. If a unit is occupied by a tenant and the unit owner is delinquent in payment  
56 of assessments in excess of sixty days, the association may demand payment of  
57 subsequent rental payments until the unit owner is no longer delinquent, the association  
58 releases the tenant, or the tenant is no longer in possession of the unit. The demand to  
59 the tenant shall be in writing, with a copy to the unit owner, sent via first-class, postage  
60 pre-paid United States mail or hand delivery. A tenant is immune from any claim by the  
61 unit owner related to the rent timely paid to the association after the association has  
62 made written demand. If the tenant fails to make payment to the association, the  
63 association may issue notice and evict under chapter 534. The tenant does not, by virtue  
64 of payment, have any rights of a unit owner to vote in an election or examine the books  
65 and records of the association.

355.1040. 1. The association shall keep financial records sufficiently detailed to  
2 enable the association to comply with section 355.1055. All financial and other records  
3 shall be made reasonably available for examination by any unit owner and his or her  
4 authorized agents and shall include minutes of the meetings of the membership and the  
5 board, excluding executive sessions; the declaration; the bylaws; the rules and  
6 regulations; and copies of current contracts to which the association is a party.

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

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

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

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

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

21           (3) Existing or potential litigation or mediation, arbitration, or administrative  
22 proceedings;

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

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

28           (6) Information the disclosure of which would violate law other than sections  
29 355.940 to 355.1060; or

30           (7) Information relating to insurance coverage except for the declaration of  
31 coverage.

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

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

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

39           8. Information provided under this section shall not be used for commercial  
40 purposes.

          355.1045. 1. Before adopting, amending, or repealing any rule, the executive  
2 board shall give all unit owners notice of its intention to adopt, amend, or repeal a rule  
3 and provide the text of the rule or the proposed change and a date on which the

4 executive board will act on the proposed rule or amendment after considering comments  
5 from unit owners.

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

8 3. An association shall adopt rules that affect the use of or behavior in units that  
9 may be used for residential purposes only to implement a provision of the declaration or  
10 to regulate any behavior in or occupancy of a unit that violates the declaration or  
11 adversely affects the use and enjoyment of other units or the common elements by other  
12 unit owners.

355.1050. 1. The executive board, at least annually, shall adopt a proposed  
2 budget for the planned community for consideration by the unit owners. Not later than  
3 thirty days after adoption of a proposed budget, the executive board shall provide to all  
4 the unit owners a copy of the budget, including any reserves, and a statement of the  
5 basis on which any reserves are calculated and funded. Simultaneously, the board shall  
6 set a date not less than fourteen days or more than thirty days after providing the  
7 summary for a meeting of the unit owners to consider ratification of the budget. Unless  
8 at that meeting a majority of all unit owners or any larger number specified in the  
9 declaration reject the budget, the budget is ratified regardless of whether a quorum is  
10 present. If a proposed budget is rejected, the current budget continues until unit owners  
11 ratify a subsequent budget.

12 2. The executive board, at any time, may adopt a special assessment or adjusted  
13 budget if the executive board follows the procedures for ratification of a budget  
14 described in subsection 1 of this section and the unit owners do not reject the proposed  
15 assessment.

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

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

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

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

24 4. (1) At least once every three years, an association shall obtain an external  
25 financial audit conducted by an independent certified public accountant.

26 (2) Notwithstanding the provisions of subdivision (1) of this subsection, the  
27 members of the association, upon approval of a majority of those in attendance at the  
28 annual meeting, may waive the obligation to obtain an external financial audit each

29 year, but in no event shall an external financial audit be conducted less than once every  
30 five years. If waived, the association shall notify all owners.

31 (3) An external financial audit is a financial record subject to inspection under  
32 section 355.1040.

355.1055. 1. After the original sale of a unit from the declarant, a unit owner  
2 shall furnish to a purchaser before execution of any contract for sale of a unit, or  
3 otherwise before conveyance, a resale certificate containing a copy of the declaration,  
4 other than the plats and plans; the bylaws; and the rules or regulations of the  
5 association. Such resale certificate shall disclose:

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

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

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

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

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

15 (6) The most recently prepared balance sheet and income and expenses  
16 statement, if any, of the association;

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

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

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

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

25 (11) Other than projects included in the association's current budget or reserves,  
26 a description and estimated cost of any project that has been approved by motion of the  
27 executive board to be performed within the next three years but not yet included in an  
28 annual budget.

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

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

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

**355.1060. 1. If any person subject to sections 355.940 to 355.1060 fails to comply**  
2 **with any provision therein or any provision of the declaration or bylaws, any person or**  
3 **class of persons adversely affected by such failure to comply has a claim for appropriate**  
4 **relief. The court may award reasonable attorney's fees and costs to the prevailing party.**

5           **2. If the declaration compels binding arbitration as provided for in sections**  
6 **435.350 to 435.470, the disclosure requirement of section 435.460 shall be an exhibit to**  
7 **the declaration.**

8           **3. Subject to the declaration, disputes between unit owners, or between two or**  
9 **more unit owners regarding a matter related to the planned community, may be**  
10 **required to be submitted to nonbinding dispute resolution as a prerequisite to**  
11 **commencement of a judicial proceeding.**

12           **4. Section 516.095 shall not apply if the asserted breach of a covenant relates to**  
13 **real property subject to sections 355.940 to 355.1060, provided that such breach of a**  
14 **covenant shall be subject to subdivision (1) of section 516.110. Unless adjudicated in its**  
15 **entirety before August 28, 2023, the provisions of this subsection shall apply to all facts**  
16 **and circumstances then existing.**

17           **5. Every duty governed by sections 355.940 to 355.1060 imposes an obligation of**  
18 **good faith.**

19           **6. The remedies provided by sections 355.940 to 355.1060 shall be liberally**  
20 **administered to the end that the aggrieved party is put in as good a position as if the**  
21 **other party had fully performed.**

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