

SECOND REGULAR SESSION

# HOUSE BILL NO. 2270

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE OEHLERKING.

4701H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 442, RSMo, by adding thereto six new sections relating to homeowners' rights.

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

Section A. Chapter 442, RSMo, is amended by adding thereto six new sections, to be known as sections 442.621, 442.626, 442.631, 442.636, 442.641, and 442.646, to read as follows:

**442.621. 1. Sections 442.621 to 442.646 shall be known and may be cited as the "Missouri Homeowners' Association Act".**

**2. As used in sections 442.621 to 442.646, the following terms mean:**

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

**(2) "Assessment", the sum attributable to each lot and due to the association based upon the lot's common expense liability or other moneys owed to the association under sections 442.621 to 442.646 or the governing documents of the association;**

**(3) "Association", the lot owners' association;**

**(4) "Board of directors", the governing body, regardless of name, that has the power to act on behalf of the association as designated in the governing documents;**

**(5) "Common expense", expenditures made by, or the financial liabilities of, the association including, but not limited to, any allocation to reserves;**

**(6) "Common expense liability", liability for common expenses allocated to each lot;**

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.

16 (7) "Common ground", any real property, other than a lot, that is within a  
17 planned community and that is owned or leased by the association;

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

19 (a) As part of a common promotional plan, offers to dispose of the interest of the  
20 person or group of persons in a lot not previously disposed of; or

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

22 (9) "Declaration", the recorded instrument, however denominated, that creates  
23 a planned community;

24 (10) "Governing documents", the declaration, articles of incorporation, bylaws,  
25 and rules and regulations of the association;

26 (11) "Lot", a physical portion of the planned community designated for separate  
27 ownership or occupancy as depicted on the plats of the planned community or as more  
28 particularly described in a declaration;

29 (12) "Lot owner", a declarant or other person who owns a lot, except that the  
30 term shall not include a person having an interest in a lot solely as security for an  
31 obligation;

32 (13) "Planned community", real property described in a declaration that sets  
33 forth the duties and obligations of the association and lot owner. For the purposes of  
34 sections 442.621 to 442.646, no cooperative, timeshare, or condominium is a planned  
35 community, except that a cooperative, timeshare, or condominium may be part of a  
36 planned community.

442.626. 1. Sections 442.621 to 442.646 shall apply to all planned communities  
2 and all events and circumstances related to such planned communities occurring on and  
3 after January 1, 2025.

4 2. Sections 442.621 to 442.646 shall not be construed to invalidate existing  
5 provisions of the declaration, bylaws, articles of incorporation, or plats of such planned  
6 communities.

7 3. No provision in sections 442.621 to 442.646 shall be construed to impact,  
8 hinder, impair, alter, or affect the rights of a declarant to administer, develop, construct,  
9 or convey real property subject to the declaration.

10 4. Except as expressly provided in sections 442.621 to 442.646, the effect of such  
11 sections shall not be varied by agreements and rights conferred by such sections shall  
12 not be waived.

13 5. For all purposes, each lot constitutes a separate parcel of real property and  
14 shall be separately assessed and taxed consistent with such parcel's restricted use. The  
15 personal property of an association, if any, shall not be subject to taxation under chapter  
16 137 and common ground shall not be subject to separate assessment or taxation.

442.631. 1. Consent of the declarant is required for any amendment to the governing documents that would impair any rights reserved by the declarant in the declaration.

2. The declaration may be amended under the procedures as contained in the declaration.

3. If a declaration is silent, a planned community has multiple declarations with differing amendment procedures, or any provision in a declaration specifying a percentage larger than sixty-seven percent of the votes in the association to amend the declaration is hereby declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of sixty-seven percent of the votes in the association.

4. A unanimous vote of the lot owners is required to amend any declaration to change the allocated interest of a lot. A unanimous vote of the lot owners is not required to change or add a restriction that may be more burdensome.

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

6. If an amendment is proposed to the declaration by the board of directors and an insufficient number of votes are obtained to decide the question within ninety days of distributing the amendment to the lot owners, the declaration may be amended if the association provides a notice to all lot owners containing a statement that the proposed amendment would be deemed approved by that lot owner unless one-third of the votes in the association submit a vote to reject the proposed amendment within sixty days of the date of the notice with a copy of the proposed amendment.

7. The board of directors is authorized to amend governing documents to correct drafting or technical errors.

442.636. 1. An owners' association shall be organized prior to the conveyance of the first lot in the planned community. The association shall be organized as a mutual benefit nonprofit corporation under chapter 355 no later than one year from the date of transfer of the control from the declarant. For an association not incorporated under chapter 355 before January 1, 2025, the board of directors shall be authorized to form such corporation and the nonprofit corporation shall be deemed to be the successor to the unincorporated association. No assignment agreement or other legal instrument shall be required to effectuate the assignment of duties and obligations. If a declaration contains the same provisions as required under chapter 355 for bylaws of the association, the association need not adopt bylaws, except that the amendment procedure of the declaration shall govern all provisions of such declaration.

12           **2. After transition of control of the association from the declarant under the**  
13 **provisions of the declaration, if an election of the board of directors is not held because**  
14 **of a lack of quorum of the members, the board of directors shall call a special meeting of**  
15 **the association to conduct the election. Such special meeting shall have a quorum**  
16 **requirement of ten percent of the votes in the association. If such special meeting is not**  
17 **held because of a lack of quorum, the board of directors shall call a second special**  
18 **meeting to conduct the election with no quorum requirement. No action to challenge an**  
19 **election shall be brought more than thirty days from the date of the election.**

20           **3. To ensure that the board of directors is not vacated in whole or part, the term**  
21 **of a director expires upon the election of a replacement. Any provision in a governing**  
22 **document that purports to specify a date when a term of member of the board expires is**  
23 **hereby declared void as contrary to public policy and is null and void.**

24           **4. In the absence of a board of directors, ten percent of the lot owners may call a**  
25 **special meeting to conduct an election and any quorum requirement shall be suspended.**  
26 **The newly elected board shall be deemed to be the board of directors of the association**  
27 **unless suit is filed within sixty days of the election. In such event, a court of competent**  
28 **supervision shall appoint a receiver with experience in management of an association**  
29 **during the pendency of the case.**

**442.641. 1. (1) After transition of control of the association from the declarant**  
2 **under the provisions of the declaration, the board of directors, at least annually, shall**  
3 **adopt a proposed budget for the planned community for consideration by the lot**  
4 **owners. No later than thirty days after adoption of a proposed budget, the board of**  
5 **directors shall provide to all lot owners a copy of the proposed budget including, but not**  
6 **limited to, any reserves and a statement of the basis upon which any reserves are**  
7 **calculated and funded.**

8           **(2) At the same time as the copy of the proposed budget is provided under**  
9 **subdivision (1) of this subsection, the board of directors shall set a date at least fourteen**  
10 **days after but no later than thirty days after providing the summary for a meeting of the**  
11 **lot owners to consider ratification of the budget. Unless at such meeting a majority of**  
12 **all lot owners or any larger number specified in the declaration reject the budget, the**  
13 **budget shall be deemed ratified whether a quorum is present. If a proposed budget is**  
14 **rejected, the current budget shall continue until lot owners ratify a subsequent budget.**

15           **2. Any provision in a governing document that purports to specify a maximum**  
16 **rate of assessments, or a limitation on the amount an assessment may be increased, is**  
17 **hereby declared void as contrary to public policy.**

18           **3. The association shall be entitled to recover from the lot owner any costs and**  
19 **reasonable attorney's fees incurred in connection with the collection of delinquent**

20 assessments. A judgment or decree in any action brought under this section shall  
21 include costs and reasonable attorney's fees for the prevailing party with the amount of  
22 the unpaid assessments not to be considered by the court in determining the  
23 reasonableness of such attorney's fees and costs. Upon request of any party, the  
24 court shall provide its basis for its determination of the award of attorney's fees and  
25 costs. Any application for execution upon a judgment shall include any postjudgment  
26 attorney's fees and costs incurred, which shall be recoverable unless otherwise  
27 determined by the court by motion submitted by the owner within thirty days of the  
28 date of service of such application.

29 4. An association is not subject to the limitation on the number of small claims  
30 petitions that may be filed as provided in subdivision (2) of subsection 1 of section  
31 482.330 and any judgment thereafter entered, so long as the lot owner was personally  
32 served, shall be enforceable as a judgment entered by an associate circuit court under  
33 chapter 517.

34 5. If a lot is occupied by a tenant and the lot owner is delinquent in payment of  
35 assessments in excess of sixty days, the association may demand payment of subsequent  
36 rental payments until the lot owner is no longer delinquent, the association releases the  
37 tenant, or the tenant is no longer in possession of the lot. The demand to the tenant shall  
38 be in writing, with a copy to the lot owner, sent via first-class United States mail, postage  
39 prepaid, or hand delivery. A tenant is immune from any claim by the lot owner related  
40 to the rent timely paid to the association after the association has made written demand.  
41 If the tenant fails to make payment to the association, the association may issue notice  
42 and evict under chapter 534. The tenant does not, by virtue of payment, have any rights  
43 of a lot owner to vote in an election or examine the books and records of the association.

44 6. After transition of control of the association under the provisions of the  
45 declaration, the board of directors may propose a special assessment or an amended  
46 budget so long as the board of directors follows the procedures in subsection 1 of this  
47 section and the lot owners do not reject such special assessment.

48 7. No action to challenge an assessment levied under the procedures provided for  
49 in this section shall be brought more than sixty days from the first date the assessment is  
50 due.

51 8. After transition of control of the association under the provisions of the  
52 declaration, if the board of directors determines that a special assessment is necessary to  
53 respond to an emergency to the health or safety of lot owners or occupants:

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

56           **(2) The notice of the emergency assessment shall be provided promptly to all lot**  
57 **owners; and**

58           **(3) The board of directors may spend the moneys paid on account of the**  
59 **emergency assessment only for the purposes described in the vote.**

**442.646. 1. If a declaration compels binding arbitration as provided in sections**  
2 **435.350 to 435.470, the disclosure requirement of section 435.460 shall be an exhibit to**  
3 **the declaration.**

4           **2. Subject to the declaration and any additional requirements or conditions,**  
5 **disputes between lot owners or between two or more lot owners regarding a matter**  
6 **related to the planned community may be required to be submitted to nonbinding**  
7 **dispute resolution as a prerequisite to commencement of a judicial proceeding.**

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