

SECOND REGULAR SESSION

HOUSE BILL NO. 3176

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COSTLOW.

6900H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 442, RSMo, by adding thereto ten new sections relating to the declaration and bylaws modernization act.

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

Section A. Chapter 442, RSMo, is amended by adding thereto ten new sections, to be
2 known as sections 442.900, 442.901, 442.902, 442.903, 442.904, 442.905, 442.906, 442.907,
3 442.908, and 442.909, to read as follows:

**442.900. Sections 442.900 to 442.909 shall be known and may be cited as the
2 "Missouri Declaration and Bylaws Modernization Act".**

**442.901. Sections 442.900 to 442.909 shall apply to all associations; provided,
2 however, that sections 442.900 to 442.909 shall apply with respect to events and
3 circumstances occurring after January 1, 2027, and do not invalidate existing provisions
4 of the declaration, bylaws, articles of incorporation, or plats of an association.**

442.902. As used in sections 442.900 to 442.909, the following terms mean:

2 (1) "Association", includes:

**3 (a) An association or unit owners' association as defined and provided for in
4 subdivision (3) of section 448.1-103;**

**5 (b) A homeowners' association including, but not limited to, a nonprofit
6 corporation or unincorporated association of homeowners created pursuant to a
7 declaration to own and operate portions of a planned community or other residential
8 subdivision and that has the power under the declaration to assess association members
9 to pay the costs and expenses incurred in the performance of the association's**

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.

10 obligations under the declaration, or tenants-in-common with respect to the ownership
11 of common areas or amenities of a planned community or other residential subdivision;

12 (c) Any cooperative form of ownership of multiunit housing; or

13 (d) An association as used in the context of condominium owners' association
14 under sections 448.005 to 448.210;

15 (2) "Board of directors", the governing body, regardless of title or
16 denomination, of the association;

17 (3) "Bylaws", the code or codes of rules other than the articles adopted under
18 this chapter or chapter 448 for the regulation or management of the affairs of the
19 association irrespective of the name or names by which such rules are designated.
20 Bylaws shall not include legally enforceable covenants, declarations, indentures, or
21 restrictions imposed upon members by validly recorded indentures, declarations,
22 covenants, restrictions or other recorded instruments, as they apply to real property;

23 (4) "Declarant", a person who executes a declaration and submits it for
24 recording in the office of the recorder of the county in which the property described in
25 the declaration is located;

26 (5) "Declaration", a recorded written instrument or instruments in the nature of
27 covenants running with the land that subject the land comprising the community to the
28 jurisdiction and control of an association or associations in which the owners of the
29 parcels, or their association representatives, shall be members;

30 (6) "Person", an individual, corporation, partnership, business enterprise, trust,
31 estate, or other legal entity.

442.903. The interests or rights, including any financial interests or rights, of a
2 declarant shall cease upon written release provided by the declarant or a release of all
3 real property held through either a sale, gift, or any other form of disposition of all
4 property to the association.

442.904. 1. The declaration and bylaws of an association may be amended as
2 provided in such instruments; provided, however, that if an amendment to the
3 declaration or bylaws is proposed by the board of directors and an insufficient number
4 of votes are obtained to decide the question within ninety days of distributing the
5 amendment to the members of the association, the instruments shall be adopted if the
6 association provides a notice to all members containing a statement that the proposed
7 amendment would be deemed approved by the members unless one-fifth of the voters in
8 the association submit a vote to reject the proposed amendment within sixty days of the
9 date of the notice with a copy of the proposed amendment.

10 **2. The board of directors is authorized to amend the declaration or bylaws of an**
11 **association to correct drafting, grammatical, and cross-reference mistakes, or other**
12 **technical errors.**

13 **3. No action to challenge the validity of an amendment to the declaration may be**
14 **brought more than one year after the amendment to the declaration is recorded and no**
15 **action to challenge the validity of an amendment to the bylaws may be brought more**
16 **than six months after adoption of the amendment to the bylaws.**

17 **4. If an association does not have separate adopted bylaws but such provisions**
18 **are contained in a declaration, the amendment process of the declaration shall govern,**
19 **and all provisions of the declaration shall remain valid and enforceable.**

20 **5. If a declaration or bylaws require consent from a person other than a member**
21 **or declarant, a copy of the proposed amendment and a ballot shall be provided to such**
22 **person by first-class mail and certified mail to the last known address reasonably**
23 **available and accessible to the association. If a member has the address information**
24 **available for the person, the association can rely solely upon the information provided**
25 **by the member. If the ballot is not returned within the time period and as specified in**
26 **the ballot, the person receiving the ballot is deemed to have consented to the proposed**
27 **amendment. Only the person who does not respond to the ballot shall have standing to**
28 **assert a claim against the validity of an amendment due to a lack of consent.**

442.905. 1. All claims of a member adverse to an association shall be deemed
2 **derivative and the provisions of section 355.221 shall apply unless such claim by the**
3 **member is considered a tort alleging a breach of duty causing injury or loss to the**
4 **association.**

5 **2. An association is not required to be represented by an attorney to bring a civil**
6 **action in the small claims division of the circuit court in Missouri against a member of**
7 **the association for unpaid assessments.**

8 **3. An association is not subject to the limitation on the number of small claims**
9 **petitions that may be filed or prosecuted in small claims courts under subdivision (2) of**
10 **subsection 1 of section 482.330. Any judgment entered against a member of the**
11 **association who was personally served with a summons and petition to appear in small**
12 **claims court shall be enforceable as a judgment entered by an associate circuit court**
13 **under chapter 517, or by a circuit court.**

14 **4. No action to challenge an election or appointment of a member to fill a**
15 **vacancy on the board of directors shall be brought more than thirty days from the date**
16 **of the board member's election or appointment.**

17 **5. In the absence of a board of directors, ten percent of the members may call a**
18 **special meeting according to the provisions in chapter 355 to conduct an election, and**

19 any quorum requirement shall be suspended. The newly elected board of directors shall
20 be deemed to be the board of directors of the association unless a suit is filed in a court
21 of competent jurisdiction within sixty days of the election. If a suit is filed, the court
22 shall appoint a receiver with experience in management of an association during the
23 pendency of the case.

442.906. 1. Except as expressly provided in sections 442.900 to 442.906, the
2 effect of these sections shall not be varied by agreements, and rights conferred by
3 sections 442.900 to 442.906 shall not be waived.

4 2. If a conflict arises between the provisions relating to an association that is
5 incorporated under chapter 355 and sections 442.900 to 442.909, the provisions of
6 sections 442.900 to 442.909 shall control on or after August 28, 2026.

442.907. No association, or any other legal entity under the laws of Missouri,
2 shall restrict or regulate the transfer of a property interest based upon a protected class
3 even if such restrictions or regulations are not recorded, or such restrictions or
4 regulations are unwritten but such practices are engaged in, or such interests are
5 conveyed as an interest in a legal entity; provided, however, that the foregoing shall
6 apply only to real property that is or is capable of being occupied. The attorney general
7 shall have sole authority to commence a civil action in a court of competent jurisdiction
8 to enforce this section.

442.908. 1. An association, regardless of whether it is unincorporated or its
2 corporate status has been administratively dissolved, shall have the authority to hire
3 and terminate a managing agent and other employees, agents, and independent
4 contractors; provided, however, no contract with a managing agent or employee shall
5 have a term in excess of three years or automatically renew based upon the occurrence
6 of an event.

7 2. An association shall obtain and maintain fidelity insurance covering the
8 association and any person with access to association funds, including any managing
9 agent. This requirement may be waived by a majority vote at an annual meeting of the
10 board of directors.

11 3. If an association uses the services of a managing agent to collect and disburse
12 the association's funds:

13 (1) The managing agent shall obtain and maintain fidelity insurance with the
14 association named as an additional insured on the policy; and

15 (2) The records produced, maintained, obtained, and created in performance of
16 the duties of the managing agent shall be the records of the association and shall be
17 returned to the association should the relationship between the association and
18 managing agent terminate within forty days of notice of termination.

442.909. 1. In addition to the applicable state law requirements governing retention of records, an association shall maintain and retain the records as follows:

(1) Membership roster and reports of committees for three years;

(2) Personnel and employee records, including any employment contracts, for seven years from the last date of employment;

(3) Contracts and certificates of insurance for at least seven years from the last date of coverage provided under such policies or termination of the contracts;

(4) Budget, income and expense statements, and balance sheets provided to the members on an as needed, quarterly, or annual basis for seven years from the date such documents were provided to the members of the association; and

(5) Income tax returns, minutes of the board meetings, and minutes of membership meetings, shall be retained permanently.

2. The association shall maintain a membership roster of the owners, excluding telephone numbers and electronic addresses, unless the owner has provided written consent for the use and disclosure of the owner's telephone numbers and electronic address.

3. Subject to subsections 4 and 5 of this section, all records retained by an association shall be available for examination and copying by an owner or the owner's authorized agent under chapter 355; provided, however, that the association shall not charge a fee for providing a current membership roster or current and past two years of budget, income and expense statements, and balance sheets, if the association provides electronic access of such records to the members.

4. Records retained by an association under this subsection shall not be subject to inspection, copying, or disclosure, to the extent that the records relate to:

(1) Personnel matters, salary, and medical information concerning identifiable individuals;

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

(3) Pending or potential litigation or mediation, arbitration, or administrative proceedings;

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

(5) Communications with the association's attorneys that are protected by the attorney-client privilege, or work-product doctrine, or other applicable privilege;

36 **(6) Executed ballots, unless the outcome of such election is subject to a timely**
37 **challenge by suit or the declaration or bylaws of the association expressly provide such**
38 **executed ballots as being subject to inspection; or**

39 **(7) Information, the disclosure of which would violate any other provision of law.**

40 **5. An association may charge a reasonable fee for providing copies of any**
41 **records under this section, including the actual costs associated with staff time and**
42 **supervisor's time for assisting with the production of records. An association may also**
43 **charge a reasonable fee for staff time associated with supervising an owner's inspection**
44 **of records and for the production of such records. If programming time is required**
45 **beyond the customary and usual level to comply with a request for records or**
46 **information, the fees may include the actual costs of such programming time of the**
47 **technical staff.**

48 **6. An association is not obligated to compile, format, or synthesize information**
49 **that is requested to be provided in electronic or paper format.**

50 **7. Information provided under this section shall not be used by the association or**
51 **a managing agent for commercial purposes.**

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