

FIRST REGULAR SESSION

HOUSE BILL NO. 940

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES NICHOLS (Sponsor), McNARY, HARRIS, ELLINGER, TORPEY, TAYLOR, GATSCHENBERGER, LAIR, McGEOGHEGAN, SPRENG, NETH, STREAM, SMITH (71), BERRY AND GRISAMORE (Co-sponsors).

2020L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 448, RSMo, by adding thereto twenty-three new sections relating to the common interest owners bill of rights act.

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

Section A. Chapter 448, RSMo, is amended by adding thereto twenty-three new sections, to be known as sections 448.300, 448.305, 448.310, 448.315, 448.320, 448.325, 448.330, 448.335, 448.340, 448.345, 448.350, 448.355, 448.360, 448.365, 448.370, 448.375, 448.380, 448.385, 448.390, 448.395, 448.400, 448.405, and 448.410, to read as follows:

448.300. Sections 448.300 to 448.410 shall be known and may be cited as the "Common Interest Owners Bill of Rights Act".

448.305. As used in sections 448.300 to 448.410, the following terms shall mean:

(1) "Assessment", the sum attributable to each unit and due to the association under the budget adopted under section 448.295;

(2) "Association", the unit owners association;

(3) "Bylaws", the instruments, however denominated, that contain the procedures for conduct of the affairs of the association, regardless of the form in which the association is organized, including any amendments to the instruments;

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

(5) "Common expenses", expenditures made by, or financial liabilities of, 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.

12 (6) "Common interest community", real estate described in a declaration with
13 respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay
14 for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or
15 services or other expenses related to, common elements, other units, or other real estate
16 described in that declaration. The term shall not include an arrangement described in
17 section 448.330. For purposes of this subdivision, ownership of a unit shall not include
18 holding a leasehold interest of less than twenty years in a unit, including renewal options;

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

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

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

23 (8) "Declaration", the instrument, however denominated, that creates a common
24 interest community, including any amendments to that instrument;

25 (9) "Executive board", the body, regardless of name, designated in the declaration
26 or bylaws which has power to act on behalf of the association;

27 (10) "Limited common element", a portion of the common elements allocated for
28 the exclusive use of one or more but fewer than all of the units;

29 (11) "Person", an individual, corporation, business trust, estate, trust, partnership,
30 limited liability company, association, joint venture, public corporation, government or
31 governmental subdivision, agency, or instrumentality, or any other legal or commercial
32 entity. In the case of a land trust, the term means the beneficiary of the trust rather than
33 the trust or the trustee;

34 (12) "Record", used as a noun, information that is inscribed on a tangible medium
35 or that is stored in an electronic or other medium and is retrievable in perceivable form;

36 (13) "Residential purposes", use for dwelling or recreational purposes, or both;

37 (14) "Rule", a policy, guideline, restriction, procedure, or regulation of an
38 association, however denominated, which is not set forth in the declaration or bylaws and
39 which governs the conduct of persons or the use or appearance of property;

40 (15) "Unit", a physical portion, parcel, lot, or tract of land within the common
41 interest community designated for separate ownership or occupancy;

42 (16) "Unit owner", a person that owns a unit.

 448.310. Except as expressly provided in sections 448.300 to 448.410, the effect of
2 the provisions of sections 448.300 to 448.410 shall not be varied by agreement, and rights
3 conferred by sections 448.300 to 448.410 shall not be waived.

 448.315. Every contract or duty governed by sections 448.300 to 448.410 imposes
2 an obligation of good faith in its performance or enforcement.

448.320. Except as otherwise provided in sections 448.300 to 448.410, sections
2 448.300 to 448.410 apply to all condominiums in this state that may be used for residential
3 purposes and to all other common interest communities that contain twelve or more units
4 that may be used for residential purposes and are created within this state after the
5 effective date of sections 448.300 to 448.410. Amendments to sections 448.300 to 448.410
6 apply to all common interest communities that contain twelve or more units that may be
7 used for residential purposes and are created after the effective date of sections 448.300 to
8 448.410 or are subjected to sections 448.300 to 448.410 by amendment of their declaration,
9 regardless of when the amendment to sections 448.300 to 448.410 is adopted in this state.

448.325. 1. Sections 448.300 to 448.410 apply to all common interest communities
2 that contain twelve or more units that may be used for residential purposes created in this
3 state before the effective date of sections 448.300 to 448.410; but sections 448.300 to 448.410
4 apply only with respect to events and circumstances occurring after the effective date of
5 sections 448.300 to 448.410 and do not invalidate existing provisions of the declaration,
6 bylaws, or plats or plans of those common interest communities.

7 2. The declaration, bylaws, or plats and plans of any common interest community
8 created before the effective date of sections 448.300 to 448.410 may be amended to achieve
9 any result permitted by sections 448.300 to 448.410, regardless of what applicable law
10 provided before the effective date of sections 448.300 to 448.410.

448.330. 1. An arrangement between the associations for two or more common
2 interest communities to share the costs of real estate taxes, insurance premiums, services,
3 maintenance or improvements of real estate, or other activities specified in their
4 arrangement or declarations does not create a separate common interest community.

5 2. An arrangement between an association and the owner of real estate that is not
6 part of a common interest community to share the costs of real estate taxes, insurance
7 premiums, services, maintenance or improvements of real estate, or other activities
8 specified in their arrangement shall not create a separate common interest community.
9 However, assessments against the units in the common interest community required by the
10 arrangement shall be included in the periodic budget for the common interest community,
11 and the arrangement shall be disclosed in all public offering statements and resale
12 certificates required by sections 448.300 to 448.410.

13 3. A covenant that requires the owners of separately owned parcels of real estate
14 to share costs or other obligations associated with a party wall, driveway, well, or other
15 similar use shall not create a common interest community unless the owners otherwise
16 agree.

448.335. 1. Regardless of the powers and duties of the association described in the declaration and bylaws, the association:

(1) Shall adopt and may amend bylaws and may adopt and amend rules;

(2) Shall adopt and may amend budgets;

(3) May require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding;

(4) Promptly shall provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association;

(5) Shall establish a reasonable method for unit owners to communicate among themselves and with the executive board concerning the association;

(6) May suspend any right or privilege of a unit owner that fails to pay an assessment, but shall not:

(a) Deny a unit owner or other occupant access to the owner's unit;

(b) Suspend a unit owner's right to vote;

(c) Prevent a unit owner from seeking election as a director or officer of the association; or

(d) Withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person;

(7) May exercise all other powers that may be exercised in this state by organizations of the same type as the association;

(8) Shall organize as a nonprofit corporation and be subject to the provisions of chapter 355;

(9) Shall purchase and maintain liability insurance:

(a) From an insurer licensed in this state and subject to the authority of the department of insurance, financial institutions and professional registration;

(b) Including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements;

(c) Policies that provide that:

36 a. Each unit owner is an insured person under the policy with respect to liability
37 arising out of his or her interest in the common elements or membership in the association;

38 b. The insurer waives its rights to subrogation under the policy against any unit
39 owner or members of his or her household;

40 c. No act or omission by any unit owner, unless acting within the scope of his or her
41 authority on behalf of the association, will void the policy or be a condition to recovery
42 under the policy; and

43 d. If, at the time of a loss under the policy, there is other insurance in the name of
44 a unit owner covering the same risk covered by the policy, the association's policy provides
45 primary insurance; and

46 (10) May carry any other insurance it deems appropriate to protect the association
47 or the unit owners.

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

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

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

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

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

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

448.340. 1. In the performance of their duties, officers and members of the
2 executive board appointed by the declarant shall exercise the degree of care and loyalty to
3 the association required of a trustee. Officers and members of the executive board not
4 appointed by the declarant shall exercise the degree of care and loyalty to the association
5 required of an officer or director of a corporation organized, and are subject to the conflict
6 of interest rules governing directors and officers, under chapter 355. The standards of care

7 and loyalty described in this section apply regardless of the form in which the association
8 is organized.

9 2. An association shall have an executive board created in accordance with its
10 declaration or bylaws. Except as otherwise provided in the declaration, the bylaws,
11 subsection 3 of this section, or other provisions of sections 448.300 to 448.410, the executive
12 board acts on behalf of the association.

13 3. The executive board shall not:

14 (1) Amend the declaration except as provided by law other than sections 448.300
15 to 448.410;

16 (2) Amend the bylaws;

17 (3) Terminate the common interest community;

18 (4) Elect members of the executive board, but may fill vacancies in its membership
19 for the unexpired portion of any term or, if earlier, until the next regularly scheduled
20 election of executive board members; or

21 (5) Determine the qualifications, powers, duties, or terms of office of executive
22 board members.

448.345. 1. The bylaws of the association shall:

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

4 (2) Provide for election by the executive board or, if the declaration requires, by the
5 unit owners, of a president, treasurer, secretary, and any other officers of the association
6 the bylaws specify;

7 (3) Specify the qualifications, powers and duties, terms of office, and manner of
8 electing and removing executive board members and officers and filling vacancies. No
9 person shall serve more than two consecutive terms as a member of the executive board;

10 (4) Specify the powers the executive board or officers may delegate to other persons
11 or to a managing agent;

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

14 (6) Specify a method for the unit owners to amend the bylaws;

15 (7) Contain any provision necessary to satisfy requirements in sections 448.300 to
16 448.410 or the declaration concerning meetings, voting, quorums, and other activities of
17 the association;

18 (8) Provide for any matter required by law of this state other than sections 448.300
19 to 448.410 to appear in the bylaws of organizations of the same type as the association; and

20 **(9) Require that executive board members and officers take an oath of office**
21 **pledging to abide by the association's declaration and bylaws and all laws of the state.**

22 **2. Subject to the declaration and sections 448.300 to 448.410, the bylaws may**
23 **provide for any other necessary or appropriate matters, including matters that could be**
24 **adopted as rules.**

448.350. 1. An association shall hold a meeting of unit owners annually at a time,
2 **date, and place stated in or fixed in accordance with the bylaws.**

3 **2. An association shall hold a special meeting of unit owners to address any matter**
4 **affecting the common interest community or the association if its president, a majority of**
5 **the executive board, or unit owners having at least twenty percent, or any lower percentage**
6 **specified in the bylaws, of the votes in the association request that the secretary call the**
7 **meeting. If the association does not notify unit owners of a special meeting within thirty**
8 **days after the requisite number or percentage of unit owners request the secretary to do**
9 **so, the requesting members may directly notify all the unit owners of the meeting. Only**
10 **matters described in the meeting notice required by subsection 3 of this section may be**
11 **considered at a special meeting.**

12 **3. An association shall notify unit owners of the time, date, and place of each annual**
13 **and special unit owners meeting not less than ten days or more than sixty days before the**
14 **meeting date. Notice may be by any method reasonably calculated to provide notice to the**
15 **person. The notice for any meeting shall state the time, date, and place of the meeting and**
16 **the items on the agenda, including:**

17 **(1) A statement of the general nature of any proposed amendment to the**
18 **declaration or bylaws;**

19 **(2) Any budget changes; and**

20 **(3) Any proposal to remove an officer or member of the executive board.**

21 **4. The minimum time to give notice required by subsection 3 of this section may be**
22 **reduced or waived for a meeting called to deal with an emergency.**

23 **5. Unit owners shall be given a reasonable opportunity at any meeting to comment**
24 **regarding any matter affecting the common interest community or the association.**

25 **6. The declaration or bylaws may allow for meetings of unit owners to be conducted**
26 **by telephonic, video, or other conferencing process, if the alternative process is consistent**
27 **with subsection 7 of section 448.355.**

448.355. 1. Meetings of the executive board and committees of the association
2 **authorized to act for the association shall be open to the unit owners except during**
3 **executive sessions. The executive board and those committees may hold an executive**
4 **session only during a regular or special meeting of the board or a committee. No final vote**

5 or action may be taken during an executive session. An executive session may be held only
6 to:

- 7 (1) Consult with the association's attorney concerning legal matters;
 - 8 (2) Discuss existing or potential litigation or mediation, arbitration, or
9 administrative proceedings;
 - 10 (3) Discuss labor or personnel matters;
 - 11 (4) Discuss contracts, leases, and other commercial transactions to purchase or
12 provide goods or services currently being negotiated, including the review of bids or
13 proposals, if premature general knowledge of those matters would place the association at
14 a disadvantage; or
 - 15 (5) Prevent public knowledge of the matter to be discussed if the executive board
16 or committee determines that public knowledge would violate the privacy of any person.
- 17 2. For purposes of this section, a gathering of board members at which the board
18 members do not conduct association business is not a meeting of the executive board. The
19 executive board and its members shall not use incidental or social gatherings of board
20 members or any other method to evade the open meeting requirements of this section.
- 21 3. During the period of declarant control, the executive board shall meet at least
22 four times a year. At least one of those meetings shall be held at the common interest
23 community or at a place convenient to the community. After termination of the period of
24 declarant control, all executive board meetings shall be at the common interest community
25 or at a place convenient to the community unless the unit owners amend the bylaws to vary
26 the location of those meetings.
- 27 4. At each executive board meeting, the executive board shall provide a reasonable
28 opportunity for unit owners to comment regarding any matter affecting the common
29 interest community and the association.
- 30 5. Unless the meeting is included in a schedule given to the unit owners or the
31 meeting is called to deal with an emergency, the secretary or other officer specified in the
32 bylaws shall give notice of each executive board meeting to each board member and to the
33 unit owners. The notice shall be given at least ten days before the meeting and shall state
34 the time, date, place, and agenda of the meeting.
- 35 6. If any materials are distributed to the executive board before the meeting, the
36 executive board at the same time shall make copies of those materials reasonably available
37 to unit owners, except that the board need not make available copies of unapproved
38 minutes or materials that are to be considered in executive session.
- 39 7. Unless the declaration or bylaws otherwise provide, the executive board may
40 meet by telephonic, video, or other conferencing process if:

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

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

46 8. After termination of any period when the declarant controls the association, unit
47 owners may amend the bylaws to vary the procedures for meetings described in subsection
48 7 of this section.

49 9. Instead of meeting, the executive board may act by unanimous consent as
50 documented in a record authenticated by all its members. The secretary promptly shall
51 give notice to all unit owners of any action taken by unanimous consent. After termination
52 of the period of declarant control, the executive board may act by unanimous consent only
53 to undertake ministerial actions or to implement actions previously taken at a meeting of
54 the executive board.

55 10. Even if an action by the executive board is not in compliance with this section,
56 it is valid unless set aside by a court. A challenge to the validity of an action of the
57 executive board for failure to comply with this section shall not be brought more than sixty
58 days after the minutes of the executive board of the meeting at which the action was taken
59 are approved or the record of that action is distributed to unit owners, whichever is later.

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

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

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

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

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

14 3. Except as otherwise provided in the bylaws, meetings of the association shall be
15 conducted in accordance with the most recent edition of Roberts' Rules of Order Newly
16 Revised.

448.365. 1. Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person by paper ballot, by absentee ballot under subdivision (4) of subsection 2 of this section, by a proxy under subsection 3 of this section, or, when a vote is conducted without a meeting, by electronic or paper ballot under subsection 4 of this section.

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

(1) Unit owners who are present in person shall vote by paper ballot or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting, so long as the method chosen conceals how a specific owner voted;

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

(3) Unless a greater number or fraction of the votes in the association is required by sections 448.300 to 448.410 or the declaration, a majority of the votes cast determines the outcome of any action of the association;

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

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

3. Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast under a directed or undirected proxy duly executed by a unit owner;

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

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

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

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

39 **(6) A person shall not cast undirected proxies representing more than fifteen**
40 **percent of the votes in the association;**

41 **4. Unless prohibited or limited by the declaration or bylaws, an association may**
42 **conduct a vote without a meeting. In that event, the following requirements apply:**

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

44 **(2) The association shall deliver a paper or electronic ballot to every unit owner**
45 **entitled to vote on the matter. The association shall not distribute materials in support of**
46 **or in opposition to a ballot issue or candidate;**

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

49 **(4) When the association delivers the ballots, it shall also:**

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

51 **(b) State the percent of votes necessary to approve each matter other than election**
52 **of directors;**

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

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

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

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

64 **5. If the declaration requires that votes on specified matters affecting the common**
65 **interest community be cast by lessees rather than unit owners of leased units:**

66 **(1) This section applies to lessees as if they were unit owners;**

67 **(2) Unit owners that have leased their units to other persons shall not cast votes on**
68 **those specified matters; and**

69 **(3) Lessees are entitled to notice of meetings, access to records, and other rights**
70 **respecting those matters as if they were unit owners.**

71 **6. Unit owners shall also be given notice of all meetings at which lessees are entitled**
72 **to vote.**

73 **7. Votes allocated to a unit owned by the association shall be cast in any vote of the**
74 **unit owners in the same proportion as the votes cast on the matter by unit owners other**
75 **than the association.**

448.370. 1. Regardless of provisions in the declaration, an association shall not
2 **commence an action to foreclose a lien on a unit under this section unless:**

3 **(1) The unit owner, at the time the action is commenced, owes a sum equal to at**
4 **least three months of common expense assessments based on the periodic budget last**
5 **adopted by the association under section 448.395 and the unit owner has failed to accept**
6 **or comply with a payment plan offered by the association; and**

7 **(2) The executive board votes to commence a foreclosure action specifically against**
8 **that unit.**

9 **2. Unless the parties otherwise agree, the association shall apply any sums paid by**
10 **unit owners that are delinquent in paying assessments in the following order:**

11 **(1) Unpaid assessments;**

12 **(2) Late charges;**

13 **(3) Reasonable attorney's fees and costs and other reasonable collection charges;**

14 **and**

15 **(4) All other unpaid fees, charges, penalties, interest, and late charges.**

16 **3. If the only sums due with respect to a unit are fines and related sums imposed**
17 **against the unit, a foreclosure action shall not be commenced against the unit unless the**
18 **association has a judgment against the unit owner with respect to the fines and related**
19 **sums and has perfected a judgment lien against the unit under chapter 400, the Uniform**
20 **Commercial Code.**

21 **4. Every aspect of a foreclosure, sale, or other disposition under this section,**
22 **including the method, advertising, time, date, place, and terms, shall be commercially**
23 **reasonable.**

448.375. 1. The association shall retain, in accordance with the Missouri general
2 **retention schedule established by the division of records management with the department**
3 **of records service within the office of the secretary of state, the following documents and**
4 **information:**

5 **(1) Detailed records of receipts and expenditures affecting the operation and**
6 **administration of the association and other appropriate accounting records;**

7 **(2) Minutes of all meetings of its unit owners and executive board other than**
8 **executive sessions, a record of all actions taken by the unit owners or executive board**
9 **without a meeting, and a record of all actions taken by a committee in place of the**
10 **executive board on behalf of the association;**

11 **(3) The names of unit owners in a form that permits preparation of a list of the**
12 **names of all unit owners and the addresses at which the association communicates with**
13 **them, in alphabetical order showing the number of votes each owner is entitled to cast;**

14 **(4) Its original or restated organizational documents, if required by law other than**
15 **sections 448.300 to 448.410, bylaws and all amendments to them, and all rules currently in**
16 **effect;**

17 **(5) All financial statements and tax returns of the association for the past three**
18 **years;**

19 **(6) A list of the names and addresses of its current executive board members and**
20 **officers;**

21 **(7) Its most recent annual report delivered to the secretary of state, if any;**

22 **(8) Financial and other records sufficiently detailed to enable the association to**
23 **comply with other requirements of law;**

24 **(9) Copies of current contracts to which it is a party;**

25 **(10) Records of executive board or committee actions to approve or deny any**
26 **requests for design or architectural approval from unit owners; and**

27 **(11) Ballots, proxies, and other records related to voting by unit owners for one**
28 **year after the election, action, or vote to which they relate.**

29 **2. Subject to subsections 3 and 4 of this section, all records retained by an**
30 **association shall be available for examination and copying by a unit owner or the owner's**
31 **authorized agent:**

32 **(1) During reasonable business hours or at a mutually convenient time and**
33 **location; and**

34 **(2) Upon five days' notice in a record reasonably identifying the specific records**
35 **of the association requested.**

36 **3. Records retained by an association may be withheld from inspection and copying**
37 **to the extent that they concern:**

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

39 **(2) Contracts, leases, and other commercial transactions to purchase or provide**
40 **goods or services currently being negotiated;**

41 **(3) Existing or potential litigation or mediation, arbitration, or administrative**
42 **proceedings;**

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

46 **(5) Communications with the association's attorney which are otherwise protected**
47 **by the attorney-client privilege or the attorney work-product doctrine;**

48 **(6) Information the disclosure of which would violate law other than sections**
49 **448.300 to 448.410;**

50 **(7) Records of an executive session of the executive board; or**

51 **(8) Individual unit files other than those of the requesting owner.**

52 **4. An association may charge a reasonable fee for providing copies of any records**
53 **under this section and for supervising the unit owner's inspection.**

54 **5. A right to copy records under this section includes the right to receive copies by**
55 **photocopying or other means, including copies through an electronic transmission if**
56 **available upon request by the unit owner.**

57 **6. An association is not obligated to compile or synthesize information.**

58 **7. Information provided under this section shall not be used for commercial**
59 **purposes.**

448.380. 1. Before adopting, amending, or repealing any rule, the executive board
2 **shall give all unit owners notice of:**

3 **(1) Its intention to adopt, amend, or repeal a rule and provide the text of the rule**
4 **or the proposed change; and**

5 **(2) A date on which the executive board will act on the proposed rule or**
6 **amendment after considering comments from unit owners.**

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

9 **3. An association may adopt rules to establish and enforce construction and design**
10 **criteria and aesthetic standards if the declaration so provides. If the declaration so**
11 **provides, the association shall adopt procedures for enforcement of those standards and**
12 **for approval of construction applications, including a reasonable time within which the**
13 **association must act after an application is submitted and the consequences of its failure**
14 **to act.**

15 **4. A rule regulating display of the flag of the United States shall be consistent with**
16 **federal law. In addition, the association shall not prohibit display on a unit or on a limited**
17 **common element adjoining a unit of the flag of this state, or signs regarding candidates for**
18 **public or association office or ballot questions, but the association may adopt rules**
19 **governing the time, place, size, number, and manner of those displays.**

20 **5. Unit owners may peacefully assemble on the common elements to consider**
21 **matters related to the common interest community, but the association may adopt rules**
22 **governing the time, place, and manner of those assemblies.**

23 **6. An association may adopt rules that affect the use of or behavior in units that**
24 **may be used for residential purposes, only to:**

25 **(1) Implement a provision of the declaration;**

26 **(2) Regulate any behavior in or occupancy of a unit which violates the declaration**
27 **or adversely affects the use and enjoyment of other units or the common elements by other**
28 **unit owners; or**

29 **(3) Restrict the leasing of residential units to the extent those rules are reasonably**
30 **designed to meet underwriting requirements of institutional lenders that regularly make**
31 **loans secured by first mortgages on units in common interest communities or regularly**
32 **purchase those mortgages.**

33 **7. An association's internal business operating procedures need not be adopted as**
34 **rules.**

35 **8. Every rule shall be reasonable.**

448.385. 1. An association shall deliver any notice required to be given by the
2 **association under sections 448.300 to 448.410 to any mailing or electronic mail address a**
3 **unit owner designates. Otherwise, the association may deliver notices by:**

4 **(1) Hand delivery to each unit owner;**

5 **(2) Hand delivery, United States mail postage paid, or commercially reasonable**
6 **delivery service to the mailing address of each unit;**

7 **(3) Electronic means, if the unit owner has given the association an electronic**
8 **address; or**

9 **(4) Any other method reasonably calculated to provide notice to the unit owner.**

10 **2. The ineffectiveness of a good faith effort to deliver notice by an authorized means**
11 **does not invalidate action taken at or without a meeting.**

448.390. 1. Notwithstanding any provision of the declaration or bylaws to the
2 **contrary, unit owners present in person, by proxy, or by absentee ballot at any meeting of**
3 **the unit owners at which a quorum is present, may remove any member of the executive**
4 **board and any officer elected by the unit owners, with or without cause, if the number of**
5 **votes cast in favor of removal exceeds the number of votes cast in opposition to removal,**
6 **but:**

7 **(1) A member appointed by the declarant shall not be removed by a unit owner vote**
8 **during the period of declarant control;**

9 **(2) If a member may be elected or appointed under the declaration by persons**
10 **other than the declarant or the unit owners, that member may be removed only by the**
11 **person that elected or appointed that member; and**

12 **(3) The unit owners shall not consider whether to remove a member of the**
13 **executive board or an officer elected by the unit owners at a meeting of the unit owners**
14 **unless that subject was listed in the notice of the meeting.**

15 **2. At any meeting at which a vote to remove a member of the executive board or an**
16 **officer is to be taken, the member or officer being considered for removal shall have a**
17 **reasonable opportunity to speak before the vote.**

448.395. 1. The executive board, at least annually, shall adopt a proposed budget
2 **for the common interest 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 the**
4 **unit owners a summary of the budget. Simultaneously, the board shall set a date not less**
5 **than ten days or more than sixty days after providing the summary for a meeting of the**
6 **unit owners to consider ratification of the budget. Unless at that meeting a majority of all**
7 **unit owners or any larger number specified in the declaration reject the budget, the budget**
8 **is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget**
9 **last ratified by the unit owners continues until unit owners ratify a subsequent budget.**

10 **2. The executive board, at any time, may propose a special assessment. Except as**
11 **otherwise provided in subsection 3 of this section, the assessment is effective only if the**
12 **executive board follows the procedures for ratification of a budget described in subsection**
13 **1 of this section and the unit owners do not reject the proposed assessment.**

14 **3. If the executive board determines by a two-thirds vote that a special assessment**
15 **is necessary to respond to an emergency:**

16 **(1) The special assessment shall become effective immediately in accordance with**
17 **the terms of the vote;**

18 **(2) Notice of the emergency assessment shall be provided promptly to all unit**
19 **owners; and**

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

448.400. 1. A declarant, association, unit owner, or any other person subject to
2 **sections 448.300 to 448.410 may bring an action to enforce a right granted or obligation**
3 **imposed by sections 448.300 to 448.410, the declaration, or the bylaws. Punitive damages**
4 **may be awarded for a willful failure to comply with sections 448.300 to 448.410. The court**
5 **may award reasonable attorney's fees and costs.**

6 **2. Parties to a dispute arising under sections 448.300 to 448.410, the declaration,**
7 **or the bylaws may agree to resolve the dispute by any form of binding or nonbinding**
8 **alternative dispute resolution, but:**

9 (1) A declarant may agree with the association to do so only after the period of
10 declarant control has expired; and

11 (2) An agreement to submit to any form of binding alternative dispute resolution
12 shall be in a record authenticated by the parties.

13 3. The remedies provided by sections 448.300 to 448.410 shall be liberally
14 administered to the end that the aggrieved party is put in as good a position as if the other
15 party had fully performed. However, consequential or special damages shall not be
16 awarded except as specifically provided in sections 448.300 to 448.410 or by other rule of
17 law.

 448.405. 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, mistake,
5 receivership, substantial performance, or other validating or invalidating cause supplement
6 the provisions of sections 448.300 to 448.410 except to the extent inconsistent with sections
7 448.300 to 448.410. If there is a conflict between sections 448.300 to 448.410 and other law
8 of this state, sections 448.300 to 448.410 prevail.

 448.410. Sections 448.300 to 448.410 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 does 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).