

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1222

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AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 32-25-7-7, AS ADDED BY P.L.141-2015, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. The declaration must contain a provision allowing the co-owners to amend the declaration at any time, from time to time, subject to the following:

- (1) The declarant's consent to an amendment may be required if:
  - (A) the declarant owns one (1) or more units within the condominium; and
  - (B) not more than seven (7) years have passed since the original ~~governing documents were~~ **declaration was** first recorded.
- (2) The consent of the co-owners to the amendment has been obtained as evidenced by either of the following:
  - (A) The vote of the co-owners at a meeting called for the purpose of considering the amendment.
  - (B) A written instrument signed by the co-owners.

The declaration may not require that the consent of more than seventy-five percent (75%) of the co-owners is required for consent under this subdivision.

- (3) **If the consent of the eligible first mortgage holders as defined in the governing documents is required, only first mortgage holders that provide an address to the secretary of the board**

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**must be notified.** The consent of ~~an eligible~~ **a first** mortgage holder must be indicated in a written instrument signed by the mortgage holder. However, a mortgage holder is considered to have consented to a proposed amendment if the mortgage holder does not respond to a written request for consent within thirty (30) days after the mortgage holder receives the request. The governing documents may not require that the consent of more than seventy-five percent (75%) of ~~the eligible first~~ mortgage holders **eligible to receive notice** is required for consent under this subdivision.

(4) Notwithstanding subdivisions (1) through (3), the declaration may require the approval of at least ninety-five percent (95%) of the co-owners to convey common areas or to dissolve the condominium.

SECTION 2. IC 32-25-8-2.5, AS ADDED BY P.L.141-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2.5. **(a) A co-owner of the condominium is entitled to attend any meeting of the board of directors of the condominium, including the annual meeting. However, the board of directors may meet in private to discuss delinquent assessments. The board of directors may also meet in private with legal counsel to discuss the initiation of litigation, or to discuss litigation that either is pending or has been threatened specifically in writing. As used in this subsection, "litigation" includes any judicial action or administrative law proceeding under state or federal law.**

**(b)** The minutes of meetings of the board of directors of a condominium, including the annual meeting, must be made available to a co-owner of the condominium for inspection upon request. The requesting co-owner may make a request to inspect the minutes:

- (1) in person;
- (2) in writing; or
- (3) by electronic mail.

The association of co-owners may charge the requesting co-owner a reasonable copying fee if the co-owner requests a written copy of the minutes.

SECTION 3. IC 32-25-8.5-9 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 9. The condominium instruments must include grievance resolution procedures that apply to all members of the association of co-owners and the board.~~

SECTION 4. IC 32-25.5-1-1, AS AMENDED BY P.L.148-2015, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) **Subject to subsection (b)**, this article

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applies to the following:

- (1) A homeowners association established after June 30, 2009, that is authorized to impose mandatory dues on the homeowners association's members.
- (2) A homeowners association established before July 1, 2009:
  - (A) if a majority of the members of the homeowners association elect to be governed by this article; or
  - (B) if the number of members required by the homeowners association's governing documents elect to be governed by this article if a different number of members other than the number established in clause (A) is required by the governing documents.

(b) The following apply to all homeowners associations, **including a homeowners association described in subsection (a)(2), regardless of whether the members of the homeowners association have elected under subsection (a)(2)(A) or (a)(2)(B) to be governed by this article:**

- (1) IC 32-25.5-3-3(g) through IC 32-25.5-3-3(m).
- (2) IC 32-25.5-3-9.
- (3) IC 32-25.5-3-10.
- (4) IC 32-25.5-4.
- (5) IC 32-25.5-5.

SECTION 5. IC 32-25.5-3-3, AS AMENDED BY P.L.141-2015, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) A homeowners association shall prepare an annual budget.

(b) The annual budget must reflect:

- (1) the estimated revenues and expenses for the budget year; and
- (2) the estimated surplus or deficit as of the end of the current budget year.

(c) The homeowners association shall provide each member of the homeowners association with:

- (1) a:
  - (A) copy of the proposed annual budget; or
  - (B) written notice that a copy of the proposed annual budget is available upon request at no charge to the member; and
- (2) a written notice of the amount of any increase or decrease in a regular annual assessment paid by the members that would occur if the proposed annual budget is approved;

before the homeowners association meeting held under subsection (d).

(d) Subject to subsection (f), a homeowners association budget must be approved at a meeting of the homeowners association members by

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a majority of the members of the homeowners association in attendance at a meeting called and conducted in accordance with the requirements of the homeowners association's governing documents.

(e) For purposes of this section, a member of a homeowners association is considered to be in attendance at a meeting if the member attends:

- (1) in person;
- (2) by proxy; or
- (3) by any other means allowed under:
  - (A) state law; or
  - (B) the governing documents of the homeowners association.

(f) If the number of members of the homeowners association in attendance at a meeting held under subsection (d) does not constitute a quorum as defined in the governing documents of the homeowners association, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred percent (100%) of the amount of the last approved homeowners association annual budget. However, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget if the governing documents of the homeowners association allow the board to adopt an annual budget under this subsection for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget.

(g) Subject to subsection (k):

- (1) the financial records, including all contracts, invoices, bills, receipts, and bank records, of a homeowners association must be available for inspection by each member of the homeowners association upon written request; and
- (2) the minutes of meetings of the homeowners association board, including the annual meeting, must be available to a member of the homeowners association for inspection upon the homeowners association member's request, which may be submitted:
  - (A) in person;
  - (B) in writing; or
  - (C) by electronic mail.

**In addition to the right to inspect the meeting minutes of the homeowners association board, a member of a homeowners association has the right to attend any meeting of the homeowners association board, including an annual meeting**



**of the board. However, the board of directors may meet in private to discuss delinquent assessments. The board of directors may also meet in private with legal counsel to discuss the initiation of litigation, or to discuss litigation that either is pending or has been threatened specifically in writing. As used in this subsection, "litigation" includes any judicial action or administrative law proceeding under state or federal law.**

A written request for inspection must identify with reasonable particularity the information being requested. A member's ability to inspect records under this section shall not be unreasonably denied or conditioned upon provision of an appropriate purpose for the request. The homeowners association may charge a reasonable fee for the copying of a record requested under this subsection if the homeowners association member requests a written copy of the record.

(h) Subject to subsections (j) and (k), if there is a dispute between a homeowner and a homeowners association, the officers of the homeowners association must make all communications concerning the dispute available to the homeowner.

(i) Subject to subsections (j) and (k), the following apply:

(1) A homeowners association shall make all communications and information concerning a lot available to the owner of the lot or a home on the lot.

(2) If a homeowners association initiates communication with any member about another member's lot, the homeowners association must give a copy of that communication to the other member whose lot is the subject of the communication. **However, this subdivision does not apply if the communication concerns suspected criminal activity, or activity that is the subject of a law enforcement investigation, involving the member whose lot is the subject of the communication.**

(j) A homeowners association is not required to make:

(1) communications between the homeowners association and the legal counsel of the homeowners association; and

(2) other communications or attorney work product prepared in anticipation of litigation;

available to the owner of a lot or home.

(k) A homeowners association is not required to make available to a member for inspection any of the following:

(1) Unexecuted contracts.

(2) Records regarding contract negotiations.

(3) Information regarding an individual member's association

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account to a person who is not a named party on the account.

(4) Any information that is prohibited from release under state or federal law.

(5) Any records that were created more than two (2) years before the request.

**(6) Information that:**

**(A) is provided by a member of the homeowners association about another member of the homeowners association; and**

**(B) concerns suspected criminal activity involving the other member.**

Except as otherwise provided in this article (including subsection (j) and this subsection), other applicable law, or the governing documents of the homeowners association, a homeowners association is not required to retain a record of a written or electronic communication for any specific period of time. However, a homeowners association or a member of the board of a homeowners association shall retain for at least two (2) years after receipt, and during that period shall make available to a member of the homeowners association at the member's request, any written or electronic communication received by the homeowners association or board member that relates to a financial transaction of the homeowners association and that is not otherwise excepted from disclosure under this article or other applicable law.

(l) Nothing in this chapter:

(1) abrogates or eliminates provisions in homeowners association agreements that permit or require additional disclosure or inspection rights not required by this chapter; or

(2) prevents a homeowners association from agreeing to make disclosures or to provide inspection rights not required by this chapter.

(m) A homeowners association may not charge a fee for the first hour required to search for a record in response to a written request submitted under this chapter. A homeowners association may charge a search fee for any time that exceeds one (1) hour. The following provisions apply if a homeowners association charges a search fee:

(1) The homeowners association shall charge an hourly fee that does not exceed thirty-five dollars (\$35) per hour.

(2) The homeowners association may charge the fee only for time that the person making the search actually spends in searching for the record.

(3) The homeowners association shall prorate the fee to reflect any search time of less than one (1) hour.

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(4) The total amount of the fee charged by the homeowners association for a search may not exceed two hundred dollars (\$200).

SECTION 6. IC 32-25.5-3-9, AS ADDED BY P.L.141-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. The governing documents must contain a provision allowing the owners to amend the governing documents at any time, from time to time, subject to the following:

- (1) The declarant's consent to an amendment may be required if:
  - (A) the declarant owns one (1) or more units within the subdivision; and
  - (B) not more than seven (7) years have passed since the original governing documents were first recorded.
- (2) The consent of the owners to the amendment has been obtained as evidenced by either of the following:
  - (A) The vote of the owners at a meeting duly called for the purpose of considering the amendment.
  - (B) A written instrument signed by the owners.

The governing documents may not require that the consent of more than seventy-five percent (75%) of the owners is required for consent under this subdivision.

(3) **If the consent of the eligible first mortgage holders as defined in the governing documents is required, only first mortgage holders that provide an address to the secretary of the board must be notified.** The consent of an eligible a first mortgage holder must be indicated in a written instrument signed by the mortgage holder. However, a mortgage holder is considered to have consented to a proposed amendment if the mortgage holder does not respond to a written request for consent within thirty (30) days after the mortgage holder receives the request. The governing documents may not require that the consent of more than seventy-five percent (75%) of the eligible first mortgage holders **eligible to receive notice** is required for consent under this subdivision.

(4) Notwithstanding subdivisions (1) through (3), the governing documents may require the approval of at least ninety-five percent (95%) of the owners to convey common areas or to dissolve the plan of governance for the homeowners association.

SECTION 7. IC 32-25.5-4-1, AS ADDED BY P.L.141-2015, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. The attorney general may bring an action against a board of a homeowners association or an individual member

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of a board of a homeowners association if the attorney general finds that any of the following apply:

- (1) The association's funds have been knowingly or intentionally misappropriated or diverted by a board member.
- (2) A board member has knowingly or intentionally used the board member's position on the board to commit fraud or a criminal act against the association or the association's members.
- (3) A proxy was exercised, **or was allowed to be exercised**, in violation of IC 32-25.5-3-10.
- (4) A violation of IC 32-25.5-3-3 has occurred.

SECTION 8. IC 32-25.5-4-2, AS ADDED BY P.L.141-2015, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) A court in which an action is brought under this chapter may do the following:

- (1) Issue an injunction.
- (2) Order the board member to make restitution to the homeowners association or to a member of the homeowners association.
- (3) Order a board member to be removed from the board.
- (4) Order a board member to reimburse the state for the reasonable costs of the attorney general's investigation and prosecution of the violation.
- (5) Impose a civil penalty on a member of the board of a homeowners association **or on another individual, as appropriate**, determined by the court to have taken an action described in section 1(1), ~~or~~ 1(2), **or 1(3)** of this chapter.

(b) A civil penalty imposed under subsection (a)(5) may not exceed five hundred dollars (\$500) for each action described in section 1(1), ~~or~~ 1(2), **or 1(3)** of this chapter that the board member is determined by the court to have taken. The proceeds of a civil penalty imposed under subsection (a)(5) shall be deposited in the state general fund.

SECTION 9. IC 32-25.5-5-2, AS ADDED BY P.L.141-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) As used in this chapter, "claim" refers to any of the following:

- (1) A claim arising out of or relating to the interpretation, application, or enforcement of the governing documents.
- (2) A claim relating to the rights or duties of the **homeowners** association ~~of co-owners~~ or the board under the governing documents.
- (3) A claim relating to the maintenance of the subdivision.
- (4) Any other claim, grievance, or dispute among the parties

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involving the subdivision or the homeowners association.

(b) The term does not include an exempt claim.

SECTION 10. IC 32-25.5-5-8 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 8. The governing documents must include grievance resolution procedures that apply to all members of the homeowners association and the board.~~

SECTION 11. **An emergency is declared for this act.**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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