

SECOND REGULAR SESSION

HOUSE BILL NO. 2361

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WIEMANN.

6069H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 449, RSMo, by adding thereto twenty-four new sections relating to homeowners' associations.

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

Section A. Chapter 449, RSMo, is amended by adding thereto twenty-four new sections, to be known as sections 449.101, 449.102, 449.103, 449.104, 449.105, 449.108, 449.111, 449.116, 449.205, 449.217, 449.301, 449.302, 449.303, 449.306, 449.308, 449.309, 449.310, 449.313, 449.315, 449.316, 449.318, 449.323, 449.409, and 449.417, to read as follows:

449.101. Sections 449.101 to 449.417 may be cited as the "Missouri Homeowners' Bill of Rights".

449.102. Sections 449.101 to 449.417 shall apply to:

- (1) Any planned community created in this state after January 1, 2017;**
- (2) Sections 449.103, 449.217, 449.301, 449.302, 449.308, 449.309, 449.310, 449.313, 449.315, 449.316, 449.318, 449.323, 449.409, and 449.417 and subsections 2 to 5 of section 449.306 shall apply to all planned communities created in this state before January 1, 2017, but those sections apply only with respect to events and circumstances occurring after January 1, 2017, and do not invalidate existing provisions of the declaration, bylaws, or plats of those planned communities.**

449.103. As used in sections 449.101 to 449.417, the following terms mean:

- (1) "Allocated interests", the common expense liability and votes in the association;**
- (2) "Assessment", the sum attributable to each unit and due to the association pursuant to the budget adopted under section 449.323;**
- (3) "Association", the unit owners 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.

- 6 (4) "Bylaws", the written instruments, however denominated, that contain the
7 procedures for conduct of the affairs of the association, regardless of the form in which the
8 association is organized, including any amendments to the instrument;
- 9 (5) "Common elements", any real estate within a planned community which is
10 owned or leased by the association other than a unit;
- 11 (6) "Common expense liability", the liability for common expenses allocated to each
12 unit;
- 13 (7) "Common expenses", expenditures made by, or financial liabilities of, the
14 association, together with any allocations to reserves;
- 15 (8) "Declarant", a person or group of persons acting in concert that:
- 16 (a) As part of a common promotional plan, offers to dispose of the interest of the
17 person or group of persons in a unit not previously disposed of; or
- 18 (b) Reserves or succeeds to any declarant right;
- 19 (9) "Declaration", the instrument, however denominated, that creates a planned
20 community, including any amendments to that instrument;
- 21 (10) "Development rights", any right, or combination of rights reserved by a
22 declarant in the declaration to:
- 23 (a) Add real estate to a planned community;
- 24 (b) Create units, common elements, or limited common elements within a planned
25 community;
- 26 (c) Subdivide units or convert into common elements; or
- 27 (d) Withdraw real estate from a planned community;
- 28 (11) "Executive board", the body, regardless of name, designated in the declaration
29 or bylaws, which has power to act on behalf of the association;
- 30 (12) "Limited common element", a portion of the common elements allocated for
31 the exclusive use of one or more but fewer than all of the units;
- 32 (13) "Party wall", each wall including, but not limited to walls, separating
33 adjoining attached units, fence walls, and common garage walls, which are built as a part
34 of the original construction of a unit and placed on the dividing line between the units;
- 35 (14) "Person", an individual, corporation, business trust, estate, trust, partnership,
36 limited liability company, association, joint venture, public corporation, government or
37 governmental subdivision, agency, or instrumentality, or any other legal or commercial
38 entity. In the case of a land trust, the term means the beneficiary of the trust rather than
39 the trust or the trustee;
- 40 (15) "Planned community", real property with respect to which a person, by virtue
41 of such person's ownership of a unit, is obligated to pay real property taxes, insurance

42 premiums, maintenance, or improvement of other real property described in a declaration.
43 For the purposes of sections 449.101 to 449.417, neither a cooperative nor a condominium
44 is a planned community, but real estate comprising a condominium or cooperative may be
45 part of a planned community;

46 (16) "Record", information that is inscribed on a tangible medium or that is stored
47 in an electronic or other medium and is retrievable in perceivable form;

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

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

52 (19) "Special declarant rights", rights reserved for the benefit of a declarant:

53 (a) To complete improvements as indicated on plats and plans filed with the
54 declaration;

55 (b) To exercise any development rights;

56 (c) To maintain sales offices, management offices, signs advertising the planned
57 community, and models;

58 (d) To use easements through the common elements for the purpose of making
59 improvements within the planned community or within real estate which may be added to
60 the planned community;

61 (e) To make the planned community part of a larger planned community or group
62 of planned communities;

63 (f) To make the planned community subject to a master association; or

64 (g) To appoint or remove any officer or executive board member of the association
65 or any master association during any period of declarant control;

66 (20) "Unit", a physical portion of the planned community designated for separate
67 ownership or occupancy such as a lot as depicted on the plats or plans recorded with the
68 declaration;

69 (21) "Unit owner", a declarant or other person who owns a unit, or a lessee of a
70 unit in a leasehold planned community whose lease expires simultaneously with any lease,
71 the expiration or termination of which will remove the unit from the planned community,
72 but does not include a person having an interest in a unit solely as security for an
73 obligation. Ownership of a unit does not include a leasehold interest of less than twenty
74 years in a unit, including renewal options.

449.104. Except as expressly provided in sections 449.101 to 449.417, the effect of
2 these sections shall not be varied by agreement, and rights conferred by these sections shall
3 not be waived.

2 **449.105. Each unit constitutes for all purposes a separate parcel of real estate, and**
3 **shall be separately assessed and taxed. The personal property of an association, if any,**
4 **shall not be subject to taxation under section 137.122 and common elements shall not be**
5 **subject to separate assessment or taxation.**

2 **449.108. The principles of law and equity, including the law of corporations, any**
3 **other form of organization authorized by the law of this state, and unincorporated**
4 **associations, the law of real estate, and the law relative to capacity to contract, principal**
5 **and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,**
6 **receivership, substantial performance, or other validating or invalidating cause supplement**
7 **the provisions of sections 449.101 to 449.417, except to the extent inconsistent with sections**
8 **449.101 to 449.417. If there is a conflict between sections 449.101 to 449.417 and other laws**
9 **of this state, sections 449.101 to 449.417 shall prevail.**

2 **449.111. If any provision of sections 449.101 to 449.417 or the application thereof**
3 **to anyone or to any circumstances is held invalid, the remainder of those sections and the**
4 **application of such provisions to others or other circumstances shall not be affected**
5 **thereby.**

2 **449.116. Sections 449.101 to 449.417 modify, limit, and supersede the federal**
3 **Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et**
4 **seq., but do not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section**
5 **7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of**
6 **that act, 15 U.S.C. Section 7003(b).**

2 **449.205. 1. For a planned community created after January 1, 2017, the**
3 **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 or**
13 **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 administrative**
22 **fee or charge, which 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 considers**
26 **appropriate to preserve the planned community including restrictions on use or the**
27 **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, the sum of the undivided interest in the common elements allocated at any time**
35 **to all the units shall equal one if stated as a fraction or one-hundred percent if stated as a**
36 **percentage. In the event of discrepancy between an allocated interest and the result**
37 **derived from application of the pertinent formula, the allocated interest stated in the**
38 **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 pursuant to subsection 5 of section**
41 **449.217.**

449.217. 1. For a planned community created after January 1, 2017, a declaration,
2 **plat, and plans may be amended only by a vote or agreement of unit owners to which at**
3 **least sixty-seven percent of the votes in the association are allocated except for amendments**
4 **authorized under subsection 6 of this section. The declaration may specify a smaller**
5 **number only if all of the units are restricted exclusively to nonresidential use. A**
6 **unanimous vote of the unit owners is required to amend any declaration to change the**
7 **boundaries of any unit, the allocated interest of a unit, or the requirement that units shall**
8 **be used solely for residential purposes for any planned community created after January**
9 **1, 2017. A unanimous vote of the unit owners is not required to change or add a restriction**
10 **on use.**

11 **2. A declarant, prior to conveyance of a unit, may create or amend the declaration**
12 **to change, add, or increase a special declarant right or development right. After**
13 **conveyance of a unit, an amendment to change, increase, add, or amend a development**
14 **right or special declarant right, but not exercise a right reserved, shall:**

15 **(1) Require unanimous consent of all unit owners other than the declarant to**
16 **withdraw real estate from the planned community or to change the right to appoint or**
17 **remove any officer or executive board member of the association or any master association**
18 **during any period of declarant control;**

19 **(2) Require approval of two-thirds of the unit owners other than the declarant to**
20 **subdivide units; add real estate to the planned community; create units, common elements,**
21 **or limited common elements within a planned community; to make the planned community**
22 **part of a larger planned community or group of planned communities; or to make the**
23 **planned community subject to a master association; and**

24 **(3) Require approval of a majority of the unit owners, other than the declarant, to**
25 **change any of the following rights: convert a unit into common elements; to complete**
26 **improvements as indicated on plats and plans filed with the declaration; to maintain sales**
27 **offices, management offices, signs advertising the planned community and model; or to use**
28 **easements through the common elements for the purpose of making improvements within**
29 **the planned community.**

30 **3. For a planned community created before January 1, 2017, any provision in a**
31 **declaration that purports to specify a percentage larger than sixty-seven percent of the**
32 **votes in the association to amend the declaration is hereby declared void as contrary to**
33 **public policy, and until amended, such provision shall be deemed to specify a percentage**
34 **of sixty-seven percent. Provided, however, unanimous consent of unit owners shall be**
35 **required to amend any declaration to create or increase special declarant rights, increase**
36 **the number of units, change the boundaries of any unit, or change the allocated interest of**
37 **a unit or the requirement that units shall be used solely for residential purposes.**
38 **Unanimous consent is not required to change or add a restriction on use for any planned**
39 **community created before January 1, 2017.**

40 **4. The declaration of any planned community created before January 1, 2017, may**
41 **be amended in conformity with the procedures and requirements as specified in the**
42 **declaration, subject to subsection 2 of this section.**

43 **5. After expiration or termination of declarant control:**

44 **(1) The association, acting through its executive board, may petition the circuit**
45 **court in any county that includes all or a portion of the planned community for an order**
46 **amending the declaration of the planned community if:**

47 **(a) The association has twice sent notice of the proposed amendment to all unit**
48 **owners that are entitled by the declaration to vote on the proposed amendment or are**
49 **required for approval of the proposed amendment by any first-class mail, postage pre-**
50 **paid, to the last known address of the unit owner, if different than the unit, and the unit;**

51 **(b) The association has discussed the proposed amendment during at least one**
52 **meeting of the association;**

53 **(c) The unit owners to which are allocated more than fifty percent of the number**
54 **of consents, approvals, or votes of the association that would be required to adopt the**
55 **proposed amendment pursuant to the declaration have voted in favor of the proposed**
56 **amendment or not more than one-third of the unit owners have rejected the amendment**
57 **within sixty days of mailing of the amendment; and**

58 **(d) All unit owners are joined as parties to the action and may be served by**
59 **publication if personal service of process was unsuccessful;**

60 **(2) The court shall grant the petition after hearing if it finds:**

61 **(a) The association has complied with all requirements of paragraphs (a) to (d) of**
62 **subdivision (1) of this subsection;**

63 **(b) No more than one-third of the unit owners entitled by the declaration to vote**
64 **on the proposed amendment have filed written objections to the proposed amendment with**
65 **the court prior to the hearing;**

66 **(c) The proposed amendment does not eliminate any rights or privileges designated**
67 **in the declaration as belonging to any lenders that hold security interests in one or more**
68 **units and that are entitled by the declaration to vote on the proposed amendment; and**

69 **(d) The proposed amendment would neither terminate the declaration nor change**
70 **the allocated interests of the unit owners as stated in the declaration; and**

71 **(3) Upon granting a petition validating the amendment, the court shall enter an**
72 **order approving the proposed amendment and requiring the association to record the**
73 **amendment in each county that includes all or any portion of the planned community.**
74 **Once recorded, the amendment shall have the same legal effect as it if had been adopted**
75 **pursuant to any requirements set forth in the declaration. Any order shall be subject to**
76 **appellate proceeding, and, thereafter, shall not be subject to further challenge.**

77 **6. Notwithstanding anything to the contrary in sections 449.101 to 449.417, the**
78 **executive board, or the declarant during the period of declarant control, is authorized to**
79 **amend a declaration and bylaws to correct drafting or technical errors or to bring the**
80 **planned community into compliance with conditions imposed by lenders providing**
81 **government insured or guaranteed loans without a vote by the unit owners. Unit owners**
82 **shall be provided notice of the proposed amendment.**

83 **7. Except for any amendment ordered by a court under subsection 5 of this section,**
84 **no action to challenge the validity of an amendment to the declaration may be brought**
85 **more than one year after the amendment to the declaration is recorded.**

86 **8. A copy of any amendment to the declaration or bylaws shall be provided to the**
87 **unit owners.**

449.301. 1. A unit owners association shall be organized no later than the date of
2 **conveyance of the first unit in the planned community. The membership of the association**
3 **at all times consists exclusively of all unit owners or, following termination of the planned**
4 **community, of all former unit owners entitled to distribution of proceeds, their heirs,**
5 **successors, or assigns. The association shall have an executive board. The association shall**
6 **be organized as a mutual benefit nonprofit corporation under chapter 355.**

7 **2. An association created before January 1, 2017, and, after transfer of control by**
8 **the declarant, shall organize the association as a mutual benefit nonprofit corporation**
9 **under chapter 355.**

449.302. 1. Subject to the provisions of the declaration, the association, even if
2 **unincorporated or its corporate status has been administratively dissolved, shall have the**
3 **authority to:**

4 **(1) Adopt and amend bylaws and may adopt and amend rules;**

5 **(2) Adopt and may amend budgets pursuant to section 449.323;**

6 **(3) Hire and terminate managing agents and other employees, agents, and**
7 **independent contractors;**

8 **(4) Institute, defend, or intervene in litigation or administrative proceedings in its**
9 **own name on behalf of itself or two or more unit owners on matters affecting the planned**
10 **community;**

11 **(5) Make contracts and incur liabilities;**

12 **(6) Suspend any right or privilege of a unit owner that fails to pay an assessment,**
13 **but shall not:**

14 **(a) Deny a unit owner or other occupant access to the planned community, the**
15 **owner's unit, or the owners' parking space;**

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

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

20 **(7) Regulate the use and provide maintenance, repair, replacement, improvement,**
21 **and modification of common elements;**

22 **(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest**
23 **to real or personal property;**

24 **(9) Grant easements, leases, licenses, and concessions through or over the common**
25 **elements, and to release the same;**

26 **(10) Impose and receive any payments, fees, or charges for the use, rental, or**
27 **operation of the common elements, other than limited common elements and services**
28 **provided to unit owners;**

29 **(11) Impose charges for late payment;**

30 **(12) Levy interest on any past due common expense assessment or installment**
31 **thereof bearing interest at the rate established by the association not to exceed eighteen**
32 **percent per annum;**

33 **(13) Levy reasonable fines and withdraw the right to use any recreational facilities**
34 **for violations of the declaration, bylaws, and rules after notice and opportunity to be**
35 **heard;**

36 **(14) Impose reasonable charges for the preparation and recordation of**
37 **amendments to the declaration or statements of unpaid assessments;**

38 **(15) Apply for establishment of any special taxing district by presenting a petition**
39 **adopted by a majority vote of unit owners located within the proposed district to the**
40 **political subdivision of the state in which the planned community is located. The political**
41 **subdivision shall hold a public hearing concerning the matter not less than fourteen nor**
42 **more than sixty days after the petition is received, and the hearing shall be held not less**
43 **than seven days after notice of the hearing is published in a newspaper of general**
44 **circulation qualified to publish legal matters and located within the boundary of the**
45 **political subdivision. If no such newspaper exists within the boundary of such political**
46 **subdivision, then the notice shall be published in the qualified newspaper nearest the**
47 **political subdivision;**

48 **(16) Apply for financing under sections 67.2800 to 67.2835;**

49 **(17) Borrow money and assign its rights to future income as security, including the**
50 **right to receive common expense assessments;**

51 **(18) Limit or prohibit leasing, provided that if a prohibition shall require an**
52 **amendment to the declaration such amendment and prohibition shall only be effective**
53 **against those owners of record after the effective date and recording of the amendment;**

54 **(19) Exercise any other power conferred by the declaration or bylaws;**

55 **(20) Impose a reasonable administrative charge when a unit is conveyed except for**
56 **units conveyed at an involuntary sale. Any fee based upon the percentage of the sale price**
57 **shall not be reasonable;**

58 **(21) Interpret the provisions of the declaration and by-laws; and**
59 **(22) Exercise all other powers that may be exercised in this state by a nonprofit**
60 **corporation.**

61 **2. The executive board may determine whether to take enforcement action by**
62 **exercising the association's power to impose sanctions or commencing an action for a**
63 **violation of sections 449.101 to 449.417 or the declaration, bylaws, and rules, including**
64 **whether to compromise any claim for unpaid assessments or other claim made by or**
65 **against it. The executive board does not have a duty to take enforcement action if it**
66 **determines that, under the facts and circumstances presented:**

67 **(1) The association's legal position does not justify taking any or further**
68 **enforcement action;**

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

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

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

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

449.303. 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. The declaration shall provide for a period of declarant control of the association,**
6 **during which a declarant or persons designated by the declarant, may appoint and remove**
7 **the officers and members of the executive board.**

8 **3. The period of declarant control of the executive board shall terminate no later**
9 **than the earliest of:**

10 **(1) Sixty days after conveyance of three-fourths of the units, that may be created**
11 **to unit owners other than a declarant;**

12 **(2) Two years after declarant has ceased to offer units for sale in the ordinary**
13 **course of business;**

14 **(3) Two years after any right to add new units was last exercised; or**

15 **(4) The day the declarant, after giving notice to unit owners, records an instrument**
16 **voluntarily surrendering all rights to control activities of the association.**

17 **4. Expiration or termination of the period of declarant control shall not affect or**
18 **impair the declarant's exercise of any other rights reserved in the declaration.**

19 **5. One member of the executive board shall be elected by unit owners other than**
20 **the declarant not later than sixty days after conveyance of one-fourth of the units that may**
21 **be created. One-third of the members of the executive board shall be elected by unit**
22 **owners other than the declarant not later than sixty days after conveyance of one-half of**
23 **the units that may be created. All members of the executive board shall be elected by unit**
24 **owners other than the declarant not later than sixty days after conveyance of three-fourths**
25 **of the units that may be created.**

26 **6. A declarant may voluntarily surrender the right to appoint and remove officers**
27 **and members of the executive board before the period of declarant control ends. In that**
28 **event, the declarant may require declarant approval for specified actions of the association**
29 **or executive board as described in a recorded instrument executed by the declarant before**
30 **such specified actions become effective.**

31 **7. The executive board shall not:**

32 **(1) Amend the declaration except as provided in subsection 6 of section 449.217;**

33 **(2) Amend the bylaws except as provided in sections 449.101 to 449.417;**

34 **(3) Terminate the planned community;**

35 **(4) Elect members to the executive board. The board may fill vacancies on the**
36 **executive board for the unexpired portion of any term or, if earlier, until the next regularly**
37 **scheduled election of executive board members; or**

38 **(5) Determine the qualifications, powers, duties, or terms of office of the executive**
39 **board.**

449.306. 1. For a planned community created after January 1, 2017, the bylaws of
2 **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;**

5 **(2) Provide for election of a president, secretary, treasurer, and any other officers**
6 **of the executive board 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. A**
9 **member of the executive board shall be a member in good standing including payment of**
10 **assessments and other charges imposed under the declaration or bylaws;**

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

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

15 **(6) Contain any provision necessary to satisfy requirements in section 449.101 to**
16 **449.417 or the declaration concerning meetings, voting, quorums, and other activities of**
17 **the association; and**

18 **(7) Provide for any matter required by law of this state other than section 449.101**
19 **to 449.417 to appear in the bylaws of organizations of the same type as the association.**

20 **2. Bylaws may be amended by a majority vote of the unit owners. Consent of the**
21 **declarant is required for any amendment to the bylaws that would impair a development**
22 **right or special declarant right.**

23 **3. If the bylaws are recorded, any subsequent amendment shall not require**
24 **recordation if the bylaws are replaced by unrecorded bylaws then a recorded instrument**
25 **shall release the bylaws from the land records.**

26 **4. Except for any amendment ordered by a court under subsection 5 of section**
27 **449.217, no action to challenge the validity of an amendment to the bylaws shall be brought**
28 **more than six months after the amendment becomes effective.**

29 **5. The bylaws shall not include covenants or restrictions to use, occupancy, or**
30 **alienation of units.**

31 **6. The declarant shall not be liable for bylaws that fail to comply with this section,**
32 **which may be cured by the executive board pursuant to subsection 5 of section 449.217.**

449.308. 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 stated**
4 **in or fixed in accordance with the bylaws. Unless limited by the declaration or bylaws,**
5 **meetings of unit owners may be conducted by telephone, video, or other conferencing**
6 **process, if the alternative process is consistent with subsection 7 of this section;**

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

9 **(a) Approved by the executive board; or**

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

15 described in the meeting notice required by subdivision (3) of this subsection shall be
16 considered at a special meeting;

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

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

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

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

29 (4) Give unit owners reasonable opportunity at any meeting to comment regarding
30 any matter affecting the planned community or the association.

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

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

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

38 (3) Discuss labor or employee matters;

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

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

45 3. For purposes of this section, a gathering of board members at which the board
46 members do not conduct association business is not a meeting of the executive board. The
47 executive board and its members shall not use incidental, electronic communications, or
48 social gatherings of board members or any other method to evade the open meeting
49 requirements of this section.

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

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

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

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

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

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

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

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

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

449.309. 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 which 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.**

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.

449.310. 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 pursuant to subdivision (4) of subsection 2 of this section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection 3 of this section.

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

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

(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 is present, the votes allocated to that unit shall be cast only in accordance with the agreement of a majority in interest of the owners of that unit, 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 449.101 to 449.417 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 and for purposes of a quorum;

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

26 **(6) Quorum is required and a majority of the votes present cast would decide the**
27 **matter unless a different percentage is required under sections 449.101 to 449.417, the**
28 **declaration, or bylaws.**

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

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

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

34 **(3) The ballot shall:**

35 **(a) Set forth each proposed action and provide an opportunity to vote for or against**
36 **the action;**

37 **(b) Indicate the number of responses needed to meet the quorum requirements;**

38 **(c) State the percent of votes necessary to approve each matter other than election**
39 **of directors;**

40 **(d) Specify the time and date by which a ballot shall be delivered to the association**
41 **to be counted, which time and date shall not be fewer than three days after the date the**
42 **association delivers the ballot; and**

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

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

48 **(5) Approval by ballot pursuant to this subsection is valid only if the number of**
49 **votes cast by ballot equals or exceeds the quorum required to be present at a meeting**
50 **authorizing the action.**

51 **4. Unit owners shall also be given notice of all meetings at which lessees are entitled**
52 **to vote.**

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

4 **(1) Property insurance on the common elements and on property that shall become**
5 **common elements, insuring risks of direct physical loss commonly insured against, which**
6 **insurance, after application of any deductibles, shall be not less than eighty percent of the**
7 **replacement cost of the insured property at the time the insurance is purchased and at each**

8 renewal date, exclusive of land, excavations, foundations, and other items normally
9 excluded from property policies. For the units in any building with a party wall, property
10 insurance shall include the units but need not include improvements and betterments
11 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 an
19 additional insured.

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

25 3. Insurance policies carried pursuant to subsection 1 of this section shall provide
26 that:

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

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

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

42 4. Any loss covered by the property policy under subdivision (1) of subsection 1 of
43 this section shall be adjusted with the association, but the insurance proceeds for that loss

44 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. The
46 insurance trustee or the association shall hold any insurance proceeds in trust for the
47 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 are
50 not entitled to receive payment of any portion of the proceeds unless there is a surplus of
51 proceeds after the property has been completely repaired or replaced, or the planned
52 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 any**
55 **unit owner or holder of a security interest. The insurer issuing the policy shall not cancel**
56 **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 because**
62 **of nonpayment has been mailed to the association, each unit owner, and each holder of a**
63 **security interest to whom a certificate or memoranda of insurance has been issued at their**
64 **respective last known address.**

65 **6. Any portion of the planned community for which insurance is required under**
66 **this section, which 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 assigned**
71 **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 be**
76 **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 that**
80 **are not repaired or replaced shall be distributed to the owners of those units and those**
81 **owners of the units to which those limited common elements were allocated, or to lien**
82 **holders, as their interests may appear; and**

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

86 **8. If the unit owners vote not to rebuild any unit, that unit's allocated interests are**
87 **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 declaration**
89 **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 against**
93 **a unit or units benefitted by the proceeds.**

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

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

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

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

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

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

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

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

449.316. 1. The association has a continuing lien on a unit for any assessment levied
2 **against that unit or fines imposed against its unit owner from the time the assessment or**
3 **fine becomes due. The association's lien may be foreclosed in like manner as a mortgage**
4 **on real estate or a power of sale pursuant to chapter 443. Fees, charges, late charges, fines,**
5 **and interest charged pursuant to subdivisions (10) to (14) of subsection 1 of section 449.302**
6 **are enforceable as assessments pursuant to this section. If an assessment is payable in**
7 **installments, the full amount of the assessment is a lien from the time the first installment**
8 **thereof becomes due.**

9 **2. A lien pursuant to this section is prior to all other liens and encumbrances on a**
10 **unit 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:**

15 **(a) The association's lien is superior to the deed of trust in an amount not to exceed**
16 **six months of the delinquent common expense assessments based on the periodic budget**
17 **adopted by the association pursuant to subsection 1 of section 449.323 which would have**
18 **become due in the absence of acceleration during the six months immediately preceding**
19 **the date of filing of a petition to enforce the association's lien, or the date of sale by the**
20 **holder of a mortgage or deed of trust; and**

21 **(b) The association's lien is junior to the deed of trust in any amount in excess of**
22 **six months of the delinquent common expense assessments based on the periodic budget**
23 **adopted by the association pursuant to subsection 1 of section 449.323.**

24 **3. If the association forecloses its lien under this section nonjudicially pursuant to**
25 **chapter 443, the association shall not be entitled to the lien priority provided for under**
26 **subsection 2 of this section.**

27 **4. Subsections 1, 2, and 3 of this section do not affect the priority of mechanics' or**
28 **materialmens' liens, or the priority of liens for other assessments made by the association.**
29 **The lien pursuant to this section is not subject to the provisions of section 513.475.**

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

32 **6. Recording of the declaration constitutes record notice and perfection of the lien.**
33 **No further recordation of any claim of lien for assessment pursuant to this section is**
34 **required. If the association records a lien against a unit, it shall contain the contact**
35 **information for the association including name, mailing address, and telephone number.**

36 **7. A lien under this section shall not include assessments in excess of five years**
37 **unless proceedings to enforce the lien are instituted within five years after the full amount**
38 **of the assessments becomes due. A unit owner shall remain personally liable for such**
39 **assessments not included in the lien.**

40 **8. This section shall not prohibit actions to recover sums for which subsection 1 of**
41 **this section creates a lien, or prohibit an association from taking a deed in lieu of**
42 **foreclosure.**

43 **9. The association shall be entitled to recover from the unit owner any costs and**
44 **reasonable attorneys' fees incurred in connection with the collection of delinquent**
45 **assessments. A judgment or decree in any action brought pursuant to this section shall**
46 **include costs and reasonable attorney's fees for the prevailing party. Attorney's fees and**
47 **costs shall not be included in the association's lien under subdivision (3) of subsection 2 of**
48 **this section.**

49 **10. The association shall furnish to a unit owner, an agent of the unit owner, or any**
50 **holder of a deed of trust, upon written request, a statement setting forth the amount of**
51 **unpaid assessments against the unit owner's unit. The statement shall be furnished within**
52 **ten business days after receipt of the request and is binding on the association, the**
53 **executive board, and every unit owner unless and to the extent known by the recipient to**
54 **be false.**

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

2 **449.318. 1. The association shall keep financial records sufficiently detailed to**
3 **enable the association to comply with section 449.409. All financial and other records shall**
4 **be made reasonably available for examination by any unit owner and his authorized**
5 **agents.**

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

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

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

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

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

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

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

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

27 **(6) Information the disclosure of which would violate law other than sections**
28 **449.101 to 449.417; or**

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

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

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

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

37 **8. Information provided pursuant to this section shall not be used for commercial**
38 **purposes.**

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

11 **2. The executive board, at any time, may adopt a special assessment or adjusted**
12 **budget so long as the increase is not more than fifteen percent of the current budget. If the**
13 **increase is more than fifteen percent of the current budget, the special assessment or**
14 **adjusted budget is effective only if the executive board follows the procedures for**
15 **ratification of a budget described in subsection 1 of this section and the unit owners do not**
16 **reject the proposed assessment.**

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

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

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

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

25 **4. An association shall maintain bank accounts in its own name. Reserves of the**
26 **association shall be maintained in a separate account and only the executive board shall**
27 **be authorized to expend or transfer funds from such account. No funds of the association**
28 **shall be co-mingled with any other association, a board member, or any agent, vendor, or**
29 **service provider of the association.**

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

- 5 (1) The effect on the proposed disposition of any right of first refusal or other
6 restraint on the free alienability of the unit;
- 7 (2) The amount of the current assessment and any unpaid assessments or other
8 charges currently due and payable from the selling unit owner;
- 9 (3) Any other fees payable by unit owners to the association;
- 10 (4) Whether a reserve study on the long-term repair and replacement of the
11 common elements has been completed and, if so, the date;
- 12 (5) The amount of any reserves and any portions of those reserves designated by
13 the association for any specified projects;
- 14 (6) The most recently prepared balance sheet and income and expenses statement,
15 if any, of the association;
- 16 (7) The current operating budget of the association;
- 17 (8) A statement of any unsatisfied judgments against the association and the status
18 of any pending suits in which the association is a defendant;
- 19 (9) A statement describing any insurance coverage for the benefit of unit owners;
- 20 (10) A statement as to whether the executive board has knowledge that any
21 alterations or improvements to the unit or limited common elements assigned thereto
22 violate any provision of the declaration; and
- 23 (11) Other than projects included in the association's budget or reserves, a
24 description and estimated cost of any project that is anticipated within the current fiscal
25 year or next two succeeding fiscal years in excess of ten percent of the association's current
26 budget.
- 27 2. Within ten days after a request by a unit owner, the association shall furnish a
28 certificate containing the information necessary to enable the unit owner to comply with
29 this section. A unit owner or a licensed real estate agent acting on behalf of a unit owner
30 providing a certificate pursuant to subsection 1 of this section is not liable to the purchaser
31 for any erroneous information provided by the association and included in the certificate.
- 32 3. A purchaser is not liable for any unpaid assessment or fee greater than the
33 amount set forth in the certificate prepared by the association.
- 34 4. A unit owner is not liable to a purchaser for the failure or delay of the association
35 to provide the certificate in a timely manner, but the purchase contract is voidable by the
36 purchaser until the certificate has been provided and for five days thereafter or until
37 conveyance, whichever first occurs.
- 449.417. 1. If a declarant or any other person subject to sections 449.101 to 449.417
2 fails to comply with any provision therein or any provision of the declaration or bylaws,
3 any person or class of persons adversely affected by such failure to comply has a claim for

4 **appropriate relief. The court may award reasonable attorney's fees and costs to the**
5 **prevailing party.**

6 **2. The remedies provided by sections 449.101 to 449.417 shall be liberally**
7 **administered to the end that the aggrieved party is put in as good a position as if the other**
8 **party had fully performed.**

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