

1 AN ACT relating to residential communities.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 18 of this Act:*

- 6 *(1) "Assessment" means the liability for an expense that is allocated to a lot in a*  
7 *planned community in accordance with governing documents;*
- 8 *(2) "Association" means a nonprofit corporation or unincorporated organization*  
9 *that is composed of lot owners in a planned community that is responsible for the*  
10 *administrative governance, maintenance, and upkeep of the planned community;*
- 11 *(3) "Board" means the executive body of an association, regardless of name,*  
12 *designated in the declaration or bylaws to act on behalf of an association;*
- 13 *(4) "Bylaws" means a document adopted by the association for the regulation or*  
14 *management of the affairs of the association;*
- 15 *(5) "Common area" means property, including any facilities and amenities, within a*  
16 *planned community which is designated as a public space and is owned, leased,*  
17 *or required by the declaration to be maintained or operated by an association;*
- 18 *(6) "Declarant" means any person or entity, and their successors and assigns, that:*  
19 *(a) Executes and files a declaration encumbering real property; or*  
20 *(b) Authorizes real property to be governed by a declaration, as part of the*  
21 *establishment or maintenance of a planned community;*
- 22 *(7) "Declarant control period" means the period of time in which the declarant*  
23 *controls the association by appointing or removing the members of the*  
24 *association's board of directors and manages the association;*
- 25 *(8) "Declaration" means any instrument, however denominated, including but not*  
26 *limited to restrictions, covenants, conditions, or restrictions, and any amendment*  
27 *or supplement thereto, recorded among the land records of the county or counties*

1 in which a planned community or any part thereof is located, that either:

2 (a) Imposes restrictions, covenants, conditions, or maintenance or operational  
3 responsibilities for any common area on an association; or

4 (b) Conveys the authority of an association to impose on lots, or on the lot  
5 owners or occupants, or on any other entity, an assessment in connection  
6 with the provision of maintenance or services for the benefit of some or all  
7 of the lots or the common area;

8 (9) "Governing documents" means the articles of incorporation, bylaws, plat,  
9 declaration of covenants, conditions and restrictions, rules, regulations, policies,  
10 and guidelines of an association, or other written instrument granting the  
11 association the authority to manage, maintain, or otherwise affect the property  
12 under its jurisdiction;

13 (10) "Lot" means any plot or parcel of real property designated for separate  
14 ownership or occupancy and is either shown on a recorded subdivision plat for a  
15 planned community or the boundaries are described in the declaration;

16 (11) "Owner" means a declarant or other person who owns a lot in a planned  
17 community but does not include any person that has an interest in a lot solely as  
18 security for an obligation;

19 (12) "Person" means a natural person, corporation, business trust, estate, trust,  
20 partnership, association, joint venture, limited liability company, government,  
21 governmental subdivision or agency, or other legal or commercial entity;

22 (13) "Planned community" means a group of residential dwellings, excluding  
23 condominiums, composed of individual lots for which a deed, common plan, or  
24 declaration requires that:

25 (a) All owners become members of an association;

26 (b) Owners or the association hold or lease property or facilities for the benefit  
27 of all owners; or

1        (c) Owners support by membership fees or property or facilities for all owners  
2            to use;

3        (14) "Purchaser" means a person who acquires a legal or equitable interest in a lot by  
4            voluntary or involuntary transfer. A purchaser shall not be a declarant or a  
5            person in the business of selling real estate for profit;

6        (15) "Real estate" includes lands together with improvements thereon and  
7            appurtenances thereto;

8        (16) "Residential dwelling" means a building or portion of a building that is designed  
9            and intended for use and occupancy by a single household and not for business  
10           purposes, and which may share common walls, roofing, or other common  
11           structural elements.

12        ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
13 READ AS FOLLOWS:

14        (1) All planned communities in this Commonwealth are subject to the provisions of  
15            Sections 1 to 18 of this Act. Unless specifically stated, nothing in Sections 1 to 18  
16            of this Act shall invalidate any provision of a document that governs a planned  
17            community if that provision was in the document at the time the document was  
18            recorded and the document was adopted or recorded prior to the effective date of  
19            this Act.

20        (2) After the effective date of this Act, no person shall establish a planned community  
21            unless the person files and records a declaration for that planned community in  
22            the office of the county clerk of the county or counties in which the planned  
23            community is located.

24        ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
25 READ AS FOLLOWS:

26        (1) A declarant shall establish an association no later than the date upon which the  
27            first lot in the planned community is conveyed to a purchaser for fair market

1 value. The association shall be organized as a nonprofit corporation pursuant to  
2 KRS Chapter 273 or as an unincorporated nonprofit association pursuant to KRS  
3 Chapter 273A.

4 (2) The association shall consist of members who own a lot or lots in the planned  
5 community. The association shall be administered by a board of directors elected  
6 from among the owners. The owners shall elect a board with at least three (3)  
7 directors who shall take office upon election no later than the termination of any  
8 declarant control period.

9 (3) Unless otherwise provided in the governing documents, the board of directors  
10 shall be authorized to carry out the provisions of Sections 1 to 18 of this Act. If an  
11 owner is not a natural person, a principal member of a limited liability company,  
12 partner, director, officer, trustee, or employee of the owner may be elected to the  
13 board of directors.

14 (4) The initial board of directors shall promulgate the initial bylaws of the  
15 association.

16 (5) Subject to other provisions of Sections 1 to 18 in this Act, the declaration or  
17 bylaws for an incorporated or unincorporated association shall provide for the  
18 following:

19 (a) The number of persons constituting the board;

20 (b) The election method and terms of the board;

21 (c) The powers and duties of the board;

22 (d) The method of removal of directors from the board;

23 (e) The method of amending the declaration and bylaws;

24 (f) The frequency, time, and place for holding board meetings and the manner  
25 of and authority for calling, giving notice of, and conducting board  
26 meetings; and

27 (g) Any other matters the declarant or the association deems necessary and

1 appropriate.

2 (6) Unless a higher percentage of votes is required under the declaration or bylaws,  
3 the owners may remove any member of the board with or without cause, except a  
4 director appointed by the declarant, by a majority vote of all persons present in  
5 person or by proxy and entitled to vote at any meeting of the association at which  
6 a quorum is present.

7 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
8 READ AS FOLLOWS:

9 (1) A declaration shall provide a declarant control period and specify the time and  
10 manner in which the declarant control period ends. A declarant control period  
11 shall terminate no later than:

12 (a) Ninety (90) days after the initial conveyance of ninety percent (90%) all of  
13 the created lots to owners other than the declarant;

14 (b) Four (4) years after the declarant has ceased to offer lots for sale in the  
15 ordinary course of business; or

16 (c) The date selected by the declarant as provided in the declaration.

17 (2) A declarant may surrender the right to appoint and remove officers and directors  
18 of the board and relinquish management and control of the association before  
19 termination of a declarant control period.

20 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ  
21 AS FOLLOWS:

22 Upon reasonable notice, an owner shall permit agents or employees of the association  
23 access to the owner's lot for the purpose of fulfilling the association's duties and  
24 obligations. Any damage to the common areas, lots, or residential dwellings due to the  
25 granted access is the responsibility of the association or its agent. The association is  
26 liable for the prompt repair of any damage.

27 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Unless otherwise provided in the declaration or bylaws, an association, through  
3 its board, shall:

4 (a) Annually adopt and amend a budget for revenues and expenditures. The  
5 budget may include reserves to fund the future repair and replacement of  
6 capital goods in the normal course of operations; and

7 (b) Collect assessments for common expenses from the owners in accordance  
8 with Section 14 of this Act.

9 (2) Unless provided otherwise in the declaration, an association shall obtain and  
10 maintain insurance coverage no later than the first conveyance of a lot as  
11 follows:

12 (a) Property insurance on the common areas insured for replacement cost;

13 (b) Liability insurance for the common areas; and

14 (c) Other insurance as required by the declaration or bylaws.

15 (3) An association shall keep:

16 (a) A complete set of financial records in accordance with Section 10 of this  
17 Act;

18 (b) Records showing the payment for common expenses and other charges  
19 received from the owners;

20 (c) Records detailing and supporting the payment for common expenses and  
21 other charges paid to contractors, suppliers, and service providers;

22 (d) Meeting minutes for the association and the board; and

23 (e) Records of the names and mailing addresses of the owners. The owners  
24 shall maintain their current mailing address and contact information with  
25 the secretary of the association.

26 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
27 READ AS FOLLOWS:

1 (1) Unless otherwise specified in the declaration, the owners may amend the  
2 declaration or bylaws by consent of the majority of the owners of all lots in the  
3 planned community either in writing or in a special meeting called for that  
4 purpose. No amendment to the declaration shall be effective until filed with the  
5 county clerk.

6 (2) Unless otherwise specified in the declaration, the owners may terminate the  
7 declaration and the association by the written consent of not less than eighty  
8 percent (80%) of the owners of all lots in the planned community. No termination  
9 shall be effective until filed with the county clerk.

10 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
11 READ AS FOLLOWS:

12 In an association's declaration or bylaws, an association shall include the following:

13 (1) An annual meeting of the association shall be held at least once per year.  
14 Quorum for an association meeting is ten percent (10%) of the lot owners.

15 (2) Special meetings of the association may be called by the president, a majority of  
16 the board, or by written request of twenty percent (20%) of the owners or any  
17 lower percentage specified in the declaration or bylaws. Upon receipt of a written  
18 request of the owners for a special meeting, the secretary shall convene the  
19 special meeting within thirty (30) days of receipt of a written request.

20 (3) Notice of meetings of the association shall be given to owners no less than ten  
21 (10) days nor more than thirty (30) days in advance of any meeting. The secretary  
22 or other officer specified in the bylaws shall send notice by United States mail to  
23 the mailing address of record for each owner, or hand-delivered, or electronically  
24 delivered to each owner. The notice of any meeting shall state the time and place  
25 of the meeting and the items on the agenda.

26 (4) A quorum is deemed present throughout any meeting of the association if persons  
27 entitled to cast ten percent (10%) of the total lots which may be cast are in person,

1 or by proxy at the beginning of the meeting.

2 (a) Votes allocated to a lot may be cast in person, or pursuant to proxy duly  
3 executed by a lot owner. A proxy terminates one (1) year after its signed  
4 date, unless it specifies a shorter term.

5 (b) Each lot shall have one (1) vote, and cumulative voting shall not be allowed.  
6 The declaration or bylaws may provide for the option of electronic voting or  
7 voting by mail.

8 (c) The actions approved by a majority of the votes cast at an association  
9 meeting shall constitute the actions of the owners, except when approval by  
10 a greater number of owners is required by the declaration or bylaws.

11 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ  
12 AS FOLLOWS:

13 (1) Unless the bylaws specify a larger percentage, a quorum of a board is established  
14 if fifty-one percent (51%) of the directors are present at the beginning of the  
15 meeting.

16 (2) Unless otherwise specified in the Bylaws, board meetings shall be open to the  
17 owners except during executive sessions.

18 (3) A board director of an unincorporated association shall discharge his or her  
19 duties as an officer or member of the board or as a member of a committee in  
20 accordance with the standards set forth in KRS Chapter 273.215 and KRS  
21 Chapter 273.229.

22 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
23 READ AS FOLLOWS:

24 (1) An association shall keep financial records sufficiently detailed to enable the  
25 association to prepare financial statements in accordance with generally accepted  
26 accounting principles.

27 (2) No later than one hundred eighty (180) days after the end of the fiscal year, or



1 annually on a date provided in the declaration or bylaws, the association shall  
2 have a financial report prepared for the preceding fiscal year. No later than thirty  
3 (30) days after the financial report is prepared and received by the board, the  
4 association shall make the financial report available electronically at no charge  
5 or provide a paper copy with payment of a reasonable fee to a lot owner.

6 (3) The financial report shall be prepared in accordance with the following  
7 standards:

8 (a) An association with total annual revenues of less than one hundred twenty-  
9 five thousand dollars (\$125,000) shall prepare a statement of cash receipts  
10 and disbursements that disclose all sources of income and expenses by  
11 account and classification.

12 (b) An association with total annual revenues of at least one hundred twenty-  
13 five thousand dollars (\$125,000) but less than three hundred thousand  
14 dollars (\$300,000) shall prepare a financial report under the standards of a  
15 compilation by an accounting professional.

16 (c) An association with total annual revenues of at least three hundred  
17 thousand dollars (\$300,000) but less than one million dollars (\$1,000,000)  
18 shall prepare a financial report under the standards of review, to be  
19 prepared by a certified public accountant.

20 (d) An association with total annual revenues of one million dollars  
21 (\$1,000,000) or greater shall have prepared a financial report under the  
22 standards of an audit prepared by a certified public accountant.

23 (e) An association may elect to have the financial report required under this  
24 subsection prepared in accordance with a higher standard than required for  
25 the association's annual revenue level.

26 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
27 READ AS FOLLOWS:

1 (1) Except as provided in subsection (2) of this section, an owner may examine and  
2 copy the books, records, and minutes of the association pursuant to reasonable  
3 standards set forth in the declaration, bylaws, or other rules and regulations  
4 promulgated by the board, including standards governing the type of documents  
5 to be examined and copies and the time and location at which the documents may  
6 be examined, including a reasonable fee for copying documents.

7 (2) Unless approved by the board, an owner may not examine or copy from books,  
8 records, or minutes of the association:

9 (a) Information that pertains to personnel matters of the association;

10 (b) Communications with legal counsel or attorney work product pertaining to  
11 potential, threatened, or pending litigation or other property-related  
12 matters;

13 (c) Information that pertains to contracts or transactions under negotiation, or  
14 information that is contained in a contract or other agreement containing  
15 confidentiality requirements;

16 (d) Information that relates to the collection of assessments or listing of past-  
17 due owner names, lot numbers, plat numbers, lot addresses, or street  
18 addresses; or

19 (e) Information the disclosure of which is prohibited by state or federal law.

20 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
21 READ AS FOLLOWS:

22 (1) A seller of a residential dwelling or lot in a planned community shall furnish to a  
23 purchaser or purchaser's agent prior to execution of any contract for sale of a lot,  
24 or otherwise before conveyance, an association disclosure form that includes:

25 (a) The name of the association as recorded in the declaration;

26 (b) The amount of the assessment for the lot;

27 (c) A statement of any other fees payable by the seller or purchaser;

1 (d) The name, mailing address, and phone number of the person who can  
2 provide to the purchaser, at the purchaser's expense, copies of the  
3 declaration, bylaws, rules and regulations, and the latest financial  
4 statements;

5 (e) The name, mailing address, and phone number of the person who can  
6 provide a closing statement including a statement indicating if there are any  
7 outstanding fees or violations against the unit; and

8 (f) In the event there is not a declarant or board of directors actively carrying  
9 out the duties of the association, or the association has an inactive standing  
10 with the Secretary of State's office or local county clerk's office, a statement  
11 that the association is inactive.

12 (2) In lieu of providing an association disclosure form, the information required in  
13 subsection 1 of this section may be incorporated into the seller's disclosure of  
14 conditions form required in KRS 324.360.

15 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
16 READ AS FOLLOWS:

17 In addition to the provisions of the declaration, bylaws, rules, or regulations of the  
18 association:

19 (1) Common expenses shall include all costs incurred in the administration,  
20 governance, and maintenance of an association are common expenses including,  
21 but not limited to, insurance premiums and expenses, maintenance and repair  
22 expenses, and any reserves for replacement of the common areas.

23 (2) The common expense liability of each lot shall be allocated equally among all the  
24 lots in the form of an assessment. The board shall assess the common expense  
25 liability for each lot at least annually based on a budget the board adopts in  
26 accordance with Sections 6 and 14 of this Act.

27 (3) After termination of the declarant control period, the board shall abide by Section

1 14 of this Act for any increase of any assessment.

2 (4) The board may charge interest or a late fee on any past due assessment or  
3 installment at the rate established by the board, not to exceed any maximum rate  
4 allowed by law.

5 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
6 READ AS FOLLOWS:

7 (1) In addition to the provisions of the declaration, bylaws, rules, or regulations of  
8 the association:

9 (a) The assessment for each lot shall consist of:

10 1. The allocated common expense liability;

11 2. Fines for violations levied by the Board;

12 3. Individual assessments for utility services that are imposed or levied in  
13 accordance with the declaration;

14 4. Costs of maintenance, repair, or replacement incurred due to the  
15 willful or negligent act of an owner or occupant of a lot or the family,  
16 tenants, guests, or invitees of an owner or occupant of a lot; and

17 5. Costs or charges associated with the enforcement of the declarations,  
18 bylaws, rules and regulations of the association, and any provision of  
19 this section, including but not limited to reasonable attorney fees,  
20 costs, and other expense.

21 (2) Prior to imposing a charge for fines, damages, or an individual Assessment  
22 pursuant to this section, the Board shall give the owner a written notice and the  
23 opportunity to be heard.

24 (3) In addition to all other assessments which are authorized in the declaration, the  
25 board of an association shall have the power to levy a special assessment against  
26 lot owners;

27 (a) If the board finds that the purpose of the assessment is in the best interests

- 1           of the association; and
- 2           (b) The proceeds of the assessment are used primarily for the maintenance and  
3           upkeep of the common areas and other such areas of association  
4           responsibility expressly provided for in the declaration, including capital  
5           expenditures.
- 6           (4) After termination of the declarant control period, an affirmative vote of a  
7           majority of the full board shall be required to approve a special assessment.
- 8           (a) Within thirty (30) days after board passage of a special assessment, a  
9           meeting of the association shall be held to allow owners an opportunity to  
10           rescind or reduce the special assessment.
- 11           (b) A majority of the total number of lots of the planned community cast in  
12           person, or by proxy shall be required to rescind or reduce the special  
13           assessment.
- 14           (5) No director or officer of the association shall be liable for failure to perform his  
15           or her fiduciary duty if a special assessment for the funds necessary for the  
16           director or officer to perform his or her fiduciary duty is rescinded or reduced by  
17           the owners pursuant to this section. The association shall indemnify such director  
18           or officer against any damage resulting from a claimed breach of fiduciary duty  
19           arising therefrom.
- 20           (6) The failure of an owner to pay an assessment or special assessment allowed  
21           under this section shall provide the association with the right to deny the owner  
22           access to any or all of the common areas, except that access to any road within  
23           the planned community that is a common area and provides direct access to the  
24           owner's lot shall not be denied.
- 25           (7) The board shall adopt an annual budget. The board shall:
- 26           (a) Provide a budget to all owners within thirty (30) days after the adoption;  
27           (b) If the adopted budget contains an increase of greater than fifteen percent

1           (15%) from the previous year's budget, provide notice to the members of a  
2           special meeting to consider member ratification of the budget;

3           (c) The meeting shall be held within forty-five (45) days after the summary has  
4           been provided to members;

5           (d) The budget shall be deemed ratified, whether or not a quorum is present,  
6           unless at that meeting a majority of all owners, or any larger vote specified  
7           in the declaration, reject the budget.; and

8           (e) If the budget is rejected, the existing budget shall be continued until such  
9           time as a subsequent budget is adopted by the board in conformity with this  
10           subsection of this Act.

11           (8) The provisions of this section shall override any limitation on the amount of  
12           assessments or the amount of annual increases that may be contained in existing  
13           declarations, bylaws, rules, or regulations of a planned community.

14           ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
15 READ AS FOLLOWS:

16           All owners, residents, tenants, and other persons lawfully in possession and control of  
17           any part of an ownership interest shall comply with any covenant, condition, and  
18           restriction set forth in any recorded document to which they are subject and with the  
19           bylaws, rules, and regulations of the association, as lawfully amended. Any violation is  
20           grounds for the association or an owner to commence a civil action for damages,  
21           injunctive relief, or both, and an award of the costs and reasonable attorney fees.

22           ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
23 READ AS FOLLOWS:

24           (1) The association shall have a continuing lien upon the real estate or interest in  
25           any lot for the non-payment of any assessment, special assessment, or charge  
26           levied in accordance with Section 14 of this Act, as well as any related interest,  
27           finances, administrative late fees, enforcement assessments, collection costs, and

1 reasonable attorney fees that are chargeable against the lot and that remain  
2 unpaid thirty (30) days after any portion has become due and payable.

3 (2) A lien charged and properly recorded against a property pursuant to this section  
4 is:

5 (a) Valid unless it is sooner released or satisfied in the same manner provided  
6 by law for the release and satisfaction of mortgages on real property;

7 (b) Prior to any other lien, except:

8 1. Liens for real estate taxes and liens for other governmental charges,  
9 penalties, or assessments, including but not limited to liens filed by a  
10 local government pursuant to KRS 65.8835; and

11 2. Any mortgage, liens, or encumbrances recorded prior to the lien  
12 recordation against the property; and

13 (c) Permitted to be foreclosed in the same manner as a mortgage on real  
14 property in an action brought by the association.

15 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
16 READ AS FOLLOWS:

17 The governing documents of an association shall not prohibit the outdoor display of  
18 political yard signs by an owner or resident on the owner's or resident's property. Signs  
19 shall be displayed no earlier than thirty (30) days before any special, primary, or  
20 regular election and no later than seven (7) days after that election unless a longer  
21 time period is provided by local ordinance. The governing documents may include  
22 reasonable rules and regulations regarding the placement, size, and manner of display  
23 of political yard signs.

24 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
25 READ AS FOLLOWS:

26 Sections 1 to 18 of this Act may be cited as the Planned Community Act.