

CHAPTER 23

(SB 120)

AN ACT relating to residential communities.

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

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

As used in Sections 1 to 17 of this Act:

- (1) *"Assessment" means the liability for an expense that is allocated to a lot in a planned community in accordance with governing documents;*
- (2) *"Association" means a nonprofit corporation or unincorporated organization that is composed of lot owners in a planned community that is responsible for the administrative governance, maintenance, and upkeep of the planned community;*
- (3) *"Board" means the executive body of an association, regardless of name, designated in the declaration or bylaws to act on behalf of an association;*
- (4) *"Bylaws" means a document adopted by the association for the regulation or management of the affairs of the association;*
- (5) *"Common area" means property, including any facilities and amenities, within a planned community that is designated as a public space and is owned, leased, or required by the declaration to be maintained or operated by an association;*
- (6) *"Declarant" means any person or entity, and their successors and assigns, that:*
 - (a) *Executes and files a declaration encumbering real property; or*
 - (b) *Authorizes real property to be governed by a declaration, as part of the establishment or maintenance of a planned community;*
- (7) *"Declarant control period" means the period of time in which the declarant controls the association by appointing or removing the members of the association's board of directors and manages the association;*
- (8) *"Declaration" means any instrument, however denominated, including but not limited to covenants, conditions, or restrictions, and any amendment or supplement thereto, recorded among the land records of the county or counties in which a planned community or any part thereof is located, that either:*
 - (a) *Imposes restrictions, covenants, conditions, or maintenance or operational responsibilities for any common area on an association; or*
 - (b) *Conveys the authority of an association to impose on lots, or on the lot owners or occupants, or on any other entity, an assessment in connection with the provision of maintenance or services for the benefit of some or all of the lots or the common area;*
- (9) *"Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions and restrictions, rules, regulations, policies, and guidelines of an association, or other written instrument granting the association the authority to manage, maintain, or otherwise affect the property under its jurisdiction;*
- (10) *"Lot" means any plot or parcel of real property designated for separate ownership or occupancy and is either shown on a recorded subdivision plat for a planned community or the boundaries are described in the declaration;*
- (11) *"Owner" means a declarant or other person who owns a lot in a planned community but does not include any person that has an interest in a lot solely as security for an obligation;*
- (12) *"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, or other legal or commercial entity;*

- (13) (a) *"Planned community" means a group of residential dwellings, excluding condominiums, composed of individual lots for which a deed, common plan, or declaration requires that:*
1. *All owners become members of an association;*
 2. *Owners or the association hold or lease property or facilities for the benefit of all owners; or*
 3. *Owners support by membership fees or property or facilities for all owners to use;*
- (b) *"Planned communities" shall not include:*
1. *Any deed, subdivision plat or plan, or declaration which is recorded whereby the sole common facility for sharing maintenance expenses is for shared or common roadways providing access to multiple lots; or*
 2. *A current development or neighborhood that does not currently have a homeowners association established by declaration, subdivision plat, or deed;*
- (14) *"Purchaser" means a person who acquires a legal or equitable interest in a lot by voluntary or involuntary transfer. A purchaser shall not be a declarant or a person in the business of selling real estate for profit;*
- (15) *"Real estate" includes lands together with improvements thereon and appurtenances thereto; and*
- (16) *"Residential dwelling" means a building or portion of a building that is designed and intended for use and occupancy by a single household and not for business purposes, and which may share common walls, roofing, or other common structural elements.*

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

- (1) *Notwithstanding subsection (3) of this section, all planned communities in this Commonwealth are subject to the provisions of Sections 1 to 17 of this Act. Unless specifically stated, nothing in Sections 1 to 17 of this Act shall invalidate any provision of a document that governs a planned community if that provision was in the document at the time the document was recorded and the document was adopted or recorded prior to the effective date of this Act.*
- (2) *After the effective date of this Act, no person shall establish a planned community unless the person files and records a declaration for that planned community in the office of the county clerk of the county or counties in which the planned community is located.*
- (3) *The provisions of Sections 1 to 17 of this Act shall not apply to current developments or neighborhoods that do not have a homeowners' association that meet the definition of a planned community in Section 1 of this Act. Subsection (2) of this section shall only apply to homeowners' associations or planned communities formed after the effective date of this Act.*

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

- (1) *A declarant shall establish an association no later than the date upon which the first lot in the planned community is conveyed to a purchaser for fair market value. The association shall be organized as a nonprofit corporation pursuant to KRS Chapter 273 or as an unincorporated nonprofit association pursuant to KRS Chapter 273A.*
- (2) *The association shall consist of members who own a lot or lots in the planned community. The association shall be administered by a board of directors elected from among the owners. The owners shall elect a board with at least three (3) directors who shall take office upon election no later than the termination of any declarant control period.*
- (3) *Unless otherwise provided in the governing documents, the board of directors shall be authorized to carry out the provisions of Sections 1 to 17 of this Act. If an owner is not a natural person, a principal member of a limited liability company, partner, director, officer, trustee, or employee of the owner may be elected to the board of directors.*
- (4) *The initial board of directors shall promulgate the initial bylaws of the association.*
- (5) *Subject to other provisions of Sections 1 to 17 in this Act, the declaration or bylaws for an incorporated or unincorporated association shall provide for the following:*
 - (a) *The number of persons constituting the board;*
 - (b) *The election method and terms of the board;*

- (c) *The powers and duties of the board;*
 - (d) *The method of removal of directors from the board;*
 - (e) *The method of amending the declaration and bylaws;*
 - (f) *The frequency, time, and place for holding board meetings and the manner of and authority for calling, giving notice of, and conducting board meetings; and*
 - (g) *Any other matters the declarant or the association deems necessary and appropriate.*
- (6) *Unless a higher percentage of votes is required under the declaration or bylaws, the owners may remove any member of the board with or without cause, except a director appointed by the declarant, by a majority vote of all persons present in person or by proxy and entitled to vote at any meeting of the association at which a quorum is present.*

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

- (1) *A declaration shall provide a declarant control period and specify the time and manner in which the declarant control period ends.*
- (2) *A declarant may surrender the right to appoint and remove officers and directors of the board and relinquish management and control of the association before termination of a declarant control period.*

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

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

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

- (1) *Unless otherwise provided in the declaration or bylaws, an association, through its board, shall:*
 - (a) *Annually adopt and amend a budget for revenues and expenditures. The budget may include reserves to fund the future repair and replacement of capital goods in the normal course of operations; and*
 - (b) *Collect assessments for common expenses from the owners in accordance with Section 13 of this Act.*
- (2) *Unless provided otherwise in the declaration, an association formed after the effective date of this Act shall obtain and maintain insurance coverage no later than the first conveyance of a lot as follows:*
 - (a) *Property insurance on the common areas insured for replacement cost;*
 - (b) *Liability insurance for the common areas; and*
 - (c) *Other insurance as required by the declaration or bylaws.*
- (3) *An association shall keep:*
 - (a) *A complete set of financial records in accordance with Section 10 of this Act;*
 - (b) *Records showing the payment for common expenses and other charges received from the owners;*
 - (c) *Records detailing and supporting the payment for common expenses and other charges paid to contractors, suppliers, and service providers;*
 - (d) *Meeting minutes for the association and the board; and*
 - (e) *Records of the names and mailing addresses of the owners. The owners shall maintain their current mailing address and contact information with the secretary of the association.*

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

- (1) *Unless otherwise specified in the declaration, the owners may amend the declaration by consent of eighty percent (80%) of the owners of all lots in the planned community either in writing or in a special meeting called for that purpose. Except for any declaration that was created after the effective date of this Act, this subsection shall not apply to amending the declaration when it is silent as to how an amendment is to occur. No amendment to the declaration shall be effective until filed with the county clerk.*

- (2) *Unless otherwise specified in the declaration, the owners may terminate the declaration and the association by the written consent of not less than eighty percent (80%) of the owners of all lots in the planned community. Except for any declaration that was created after the effective date of this Act, this subsection shall not apply to terminating the declaration when it is silent as to how a termination is to occur. No termination shall be effective until filed with the county clerk.*
- (3) *Unless otherwise specified in the declaration, the owners may amend the bylaws by consent of a majority of the owners of all lots in the planned community either in writing or in a special meeting called for that purpose.*

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

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

- (1) *An annual meeting of the association shall be held at least once per year. A quorum for an association meeting is ten percent (10%) of the lot owners;*
- (2) *Special meetings of the association may be called by the president, a majority of the board, or by written request of twenty percent (20%) of the owners or any lower percentage specified in the declaration or bylaws. Upon receipt of a written request of the owners for a special meeting, the secretary shall convene the special meeting within thirty (30) days of receipt of a written request;*
- (3) *Notice of meetings of the association shall be given to owners no less than ten (10) days nor more than thirty (30) days in advance of any meeting. The secretary or other officer specified in the bylaws shall send notice by United States mail to the mailing address of record for each owner, or hand-delivered, or electronically delivered to each owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda; and*
- (4) *A quorum is deemed present throughout any meeting of the association if persons entitled to cast ten percent (10%) of the total lots which may be cast are in person or by proxy at the beginning of the meeting, subject to the following provisions:*
 - (a) *Votes allocated to a lot may be cast in person, or pursuant to proxy duly executed by a lot owner. A proxy terminates one (1) year after its signed date, unless it specifies a shorter term;*
 - (b) *Each lot shall have one (1) vote, and cumulative voting shall not be allowed. The declaration or bylaws may provide for the option of electronic voting or voting by mail; and*
 - (c) *The actions approved by a majority of the votes cast at an association meeting shall constitute the actions of the owners, except when approval by a greater number of owners is required by the declaration or bylaws.*

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

- (1) *Unless the bylaws specify a larger percentage, a quorum of a board is established if fifty-one percent (51%) of the directors are present at the beginning of the meeting.*
- (2) *Unless otherwise specified in the bylaws, board meetings shall be open to the owners except during executive sessions.*
- (3) *A board director of an unincorporated association shall discharge his or her duties as an officer or member of the board or as a member of a committee in accordance with the standards set forth in KRS 273.215 and 273.229.*

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

- (1) *An association shall keep financial records sufficiently detailed to enable the association to prepare financial statements in accordance with generally accepted accounting principles.*
- (2) *No later than one hundred eighty (180) days after the end of the fiscal year, or annually on a date provided in the declaration or bylaws, the association shall have a financial report prepared for the preceding fiscal year. No later than thirty (30) days after the financial report is prepared and received by the board, the association shall make the financial report available electronically at no charge or provide a paper copy with payment of a reasonable fee to a lot owner.*
- (3) *The financial report shall be prepared in accordance with the following standards:*

- (a) *An association with total annual revenues of less than one hundred twenty-five thousand dollars (\$125,000) shall prepare a statement of cash receipts and disbursements that disclose all sources of income and expenses by account and classification;*
- (b) *An association with total annual revenues of at least one hundred twenty-five thousand dollars (\$125,000) but less than three hundred thousand dollars (\$300,000) shall prepare a financial report under the standards of a compilation by an accounting professional;*
- (c) *An association with total annual revenues of at least three hundred thousand dollars (\$300,000) but less than one million dollars (\$1,000,000) shall prepare a financial report under the standards of review, to be prepared by a certified public accountant; and*
- (d) *An association with total annual revenues of one million dollars (\$1,000,000) or greater shall have prepared a financial report under the standards of an audit prepared by a certified public accountant.*

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

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

- (1) *Except as provided in subsection (2) of this section, an owner may examine and copy the books, records, and minutes of the association pursuant to reasonable standards set forth in the declaration, bylaws, or other rules and regulations promulgated by the board, including standards governing the type of documents to be examined and copies and the time and location at which the documents may be examined, including a reasonable fee for copying documents.*
- (2) *Unless approved by the board, an owner may not examine or copy from books, records, or minutes of the association:*
 - (a) *Information that pertains to personnel matters of the association;*
 - (b) *Communications with legal counsel or attorney work product pertaining to potential, threatened, or pending litigation or other property-related matters;*
 - (c) *Information that pertains to contracts or transactions under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements;*
 - (d) *Information that relates to the collection of assessments or listing of past-due owner names, lot numbers, plat numbers, lot addresses, or street addresses; or*
 - (e) *Information the disclosure of which is prohibited by state or federal law.*

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

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

- (1) *Common expenses shall include all costs incurred in the administration, governance, and maintenance of an association, including but not limited to insurance premiums and expenses, maintenance and repair expenses, and any reserves for replacement of the common areas.*
- (2) *The common expense liability of each lot shall be allocated equally among all the lots in the form of an assessment. The board shall assess the common expense liability for each lot at least annually based on a budget the board adopts in accordance with Sections 6 and 13 of this Act.*
- (3) *After termination of the declarant control period, the board shall abide by Section 13 of this Act for any increase of any assessment.*
- (4) *The board may charge interest or a late fee on any past due assessment or installment at the rate established by the board, not to exceed any maximum rate allowed by law.*

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

- (1) *In addition to the provisions of the declaration, bylaws, rules, or regulations of the association the assessment for each lot shall consist of:*
 - (a) *The allocated common expense liability;*
 - (b) *Fines for violations levied by the board;*

- (c) *Individual assessments for utility services that are imposed or levied in accordance with the declaration;*
 - (d) *Costs of maintenance, repair, or replacement incurred due to the willful or negligent act of an owner or occupant of a lot or the family, tenants, guests, or invitees of an owner or occupant of a lot; and*
 - (e) *Costs or charges associated with the enforcement of the declarations, bylaws, rules and regulations of the association, and any provision of this section, including but not limited to reasonable attorney fees, costs, and other expense.*
- (2) *Prior to imposing a charge for fines, damages, or an individual assessment pursuant to this section, the board shall give the owner a written notice and the opportunity to be heard.*
 - (3) *In addition to all other assessments which are authorized in the declaration, the board of an association shall have the power to levy a special assessment against lot owners:*
 - (a) *If the board finds that the purpose of the assessment is in the best interests of the association; and*
 - (b) *The proceeds of the assessment are used primarily for the maintenance and upkeep of the common areas and other such areas of association responsibility expressly provided for in the declaration, including capital expenditures.*
 - (4) *After termination of the declarant control period, an affirmative vote of a majority of the full board shall be required to approve a special assessment subject to the following provisions:*
 - (a) *Within thirty (30) days after board passage of a special assessment, a meeting of the association shall be held to allow owners an opportunity to rescind or reduce the special assessment; and*
 - (b) *A majority of the total number of lots of the planned community cast in person or by proxy shall be required to rescind or reduce the special assessment.*
 - (5) *No director or officer of the association shall be liable for failure to perform his or her fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his or her fiduciary duty is rescinded or reduced by the owners pursuant to this section. The association shall indemnify such director or officer against any damage resulting from a claimed breach of fiduciary duty arising therefrom.*
 - (6) *The failure of an owner to pay an assessment or special assessment allowed under this section shall provide the association with the right to deny the owner access to any or all of the common areas, except that access to any road within the planned community that is a common area and provides direct access to the owner's lot shall not be denied.*
 - (7) *The board shall adopt an annual budget. The board shall:*
 - (a) *Provide a budget to all owners within thirty (30) days after the adoption;*
 - (b) *If the adopted budget contains an increase of greater than fifteen percent (15%) from the previous year's budget, provide notice to the members of a special meeting to consider member ratification of the budget;*
 - (c) *Hold a meeting within forty-five (45) days after the summary has been provided to members;*
 - (d) *Deem the budget ratified, whether or not a quorum is present, unless at that meeting a majority of all owners, or any larger vote specified in the declaration, reject the budget; and*
 - (e) *If the budget is rejected, continue the existing budget until such time as a subsequent budget is adopted by the board in conformity with this subsection.*
 - (8) *The provisions of this section shall override any limitation on the amount of assessments or the amount of annual increases that may be contained in existing declarations, bylaws, rules, or regulations of a planned community.*

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

All owners, residents, tenants, and other persons lawfully in possession and control of any part of an ownership interest shall comply with any covenant, condition, and restriction set forth in any recorded document to which they are subject and with the bylaws, rules, and regulations of the association, as lawfully amended.

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

- (1) *The association shall have a continuing lien upon the real estate or interest in any lot for the nonpayment of any assessment, special assessment, or charge levied in accordance with Section 13 of this Act, as well as any related interest, fines, administrative late fees, enforcement assessments, collection costs, or reasonable attorney fees that are chargeable against the lot and that remain unpaid thirty (30) days after any portion has become due and payable.*
- (2) *A lien charged and properly recorded against a property pursuant to this section is:*
 - (a) *Valid unless it is sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property; and*
 - (b) *Prior to any other lien, except:*
 1. *Liens for real estate taxes and liens for other governmental charges, penalties, or assessments, including but not limited to liens filed by a local government pursuant to KRS 65.8835; and*
 2. *Any mortgage, liens, or encumbrances recorded prior to the lien recordation against the property.*

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

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

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

Sections 1 to 17 of this Act may be cited as the Planned Community Act.

Signed by Governor March 20, 2023.