

381.797 Elements of assessments for each lot -- Notice of charges -- Special assessments -- Claimed breach of fiduciary duty -- Annual budget.

- (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if a special assessment for the funds necessary for the director or officer to perform his or her fiduciary duty is rescinded or reduced by the owners pursuant to this section.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.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 23, sec. 13, effective June 29, 2023.