

AN ACT relating to planned 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 27 of this Act, unless the context requires otherwise:

- (1) "Assessment" means the liability for an expense that is allocated to a lot in a planned community;*
- (2) "Association" means an incorporated or unincorporated organization that is composed of owners of lots in a planned community and that is responsible for the administrative governance, maintenance, and upkeep of the planned community and upon which responsibilities are imposed and to which authority is granted in the declaration;*
- (3) "Board of directors" means the executive body of an association, which is exercising the power of the executive body by declaration or bylaws;*
- (4) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the association irrespective of the name or names by which those rules are designated;*
- (5) "Common area" means property within a planned community which is owned, leased, or required by the declaration to be maintained or operated by an association for the use of its members and designated as common area in the declaration;*
- (6) "Common expense" means any expense or financial liability of the association, including allocations the association designates for reserves;*
- (7) "Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration;*
- (8) "Declarant control" means the period of time in which the declarant controls the association by appointing or electing the members of the association's board of*

directors;

(9) "Declaration" means any instrument, however denominated, including any amendment or supplement, recorded among the land records of the county or counties in which any part of the planned community is located that either:

(a) Imposes on the association maintenance or operational responsibilities for the common area; or

(b) Creates the authority in the association to impose on lots, or on the owners or occupants of lots, 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, the owners or occupants of the lots, or the common area.

(10) "Dwelling unit" means a building or the portion of a building that is designed and intended for use and occupancy for residential purposes by a single household, which may share common walls, roofing, or other common structural elements.

(11) "Lot" means any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plot for a planned community or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area;

(12) "Owner" means a person who owns a lot in a planned community, excluding any person who has an interest in a lot solely as security for an obligation;

(13) "Planned community" means a residential community, excluding a condominium as defined in KRS 381.9105, composed of individual lots for which a deed, common plan, or declaration requires:

(a) That owners become members of an association that governs the community;

(b) That owners or the association holds or leases property facilities for the

benefit of the owners; or

(c) That owners support, by membership or fees, property or facilities for all owners to use;

(14) "Proxy" means a document, signed and dated by an owner, authorizing another person to vote on the owner's behalf.

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

(1) Except as otherwise provided in Sections 1 to 27 of this Act, Sections 1 to 27 of this Act applies to all planned communities created in this Commonwealth after the effective date of this Act.

(2) For all planned communities created in this Commonwealth before the effective date of this Act, Sections 1 to 27 of this Act applies only with respect to events and circumstances occurring after the effective date of this Act.

(3) The declaration, bylaws, plats, and plans of any planned community created before the effective date of this Act may be amended to achieve any result permitted by Sections 1 to 27 of this Act, regardless of what applicable law provided before the effective date of this Act.

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

A declaration for a planned community shall be accompanied by bylaws that provide for the operation of the planned community. The declaration and bylaws shall provide for:

(1) The election of the board of directors of the association;

(2) The number of persons constituting the board;

(3) The terms of the directors, with not less than one-third (1/3) to expire annually;

(4) The powers and duties of the board;

- (5) The method of removal of directors from office;
- (6) Whether the services of a manager or managing agent may be engaged;
- (7) The method of amending the declaration and bylaws;
- (8) The manner of and authority for calling, giving notice of, and conducting meetings;
- (9) The common expenses for which assessments may be made and manner of collecting from the owners their respective shares of the common expenses;
- (10) Any provision necessary to satisfy the requirements of Sections 1 to 27 of this Act concerning activities of the association;
- (11) Any matter required by law to appear in the bylaws of organizations of the same type as the association; and
- (12) Any other matters the original declarant or the association may deem necessary and appropriate.

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

- (1) (a) An association shall administer a planned community through a board of directors that shall exercise all power and authority of the association. If an owner is not an individual, any principal, member of a limited liability company, partner, director, officer, trustee, or employee of the owner may be elected to the board.
- (b) Unless otherwise provided, a board of directors may carry out any action Sections 1 to 27 of this Act requires or allows an association to take, subject to any vote required of the owners.
- (2) A declarant shall establish an association not later than the date upon which the first lot in the planned community is conveyed to a bona fide purchaser for value. The association shall be organized as a nonprofit corporation pursuant to KRS Chapter 273 or as an unincorporated association.

- (3) (a) Except as provided in subsection (4) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and directors of the board of directors. Declarant shall have no authority to remove a director elected by the owners.
- (b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:
1. For associations of three hundred (300) or fewer total lots:
 - a. Sixty (60) days after the conveyance of ninety-five percent (95%) of the lots which may be created to owners other than a declarant or subsequent declarant;
 - b. Three (3) years after all declarants have ceased to offer lots for sale in the ordinary course of business; or
 - c. Ten (10) years after the first lot was conveyed to an owner other than a declarant; and
 2. For associations of more than three hundred (300) total lots:
 - a. Sixty (60) days after conveyance of ninety-five percent (95%) of the lots which may be created to owners other than a declarant or subsequent declarant;
 - b. Five (5) years after all declarants have ceased to offer lots for sale in the ordinary course of business; or
 - c. Twenty (20) years after the first lot was conveyed to an owner other than a declarant.
- (c) A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period, but in that event declarant may require, for the duration of the period of declarant control, that specified actions of the association or

board of directors as described in a recorded instrument executed by the declarant be approved by the declarant before they become effective.

(4) (a) Not later than sixty (60) days after conveyance of fifty percent (50%) of the lots which may be created to owners other than a declarant, at least one (1) officer of the board of directors and not less than twenty percent (20%) of the officers of the board of directors shall be elected by owners other than the declarant.

(b) Not later than sixty (60) days after conveyance of seventy-five percent (75%) of the lots which may be created to owners other than a declarant, not less than thirty-three and one-third percent (33-1/3%) of the officers of the board of directors shall be elected by owners other than the declarant.

(5) Not later than the termination of any period of declarant control, the owners shall elect a board of directors of at least three (3) members. The board of directors shall elect the officers in accordance with Section 7 of this Act. The board of directors and officers shall take office upon election.

(6) Any provision of the declaration or bylaws to the contrary notwithstanding, the owners, by a majority vote of all persons present and entitled to vote at any meeting of the association at which a quorum is present, may remove any member of the board of directors with or without cause, other than a director appointed by the declarant.

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

(1) After termination of the period of declarant control, a meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners owning twenty percent (20%) of the total lots, or any lower percentage specified in the declaration or bylaws.

- (2) Notice of meetings of the association shall be given to owners no later than ten (10) days or sooner than sixty (60) days in advance of any meeting. The secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of record for each owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration, any budget changes, and any proposal to remove a director.
- (3) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if, at the beginning of the meeting, persons entitled to cast ten percent (10%) of the votes which may be cast for election of the board of directors are present in person or by proxy.
- (4) (a) If only one (1) of the multiple owners of a lot is present at a meeting of the association, he or she is entitled to cast all of the votes allocated to that lot. If more than one (1) of the multiple owners of a lot is present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is a majority agreement if any one (1) of the multiple owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any other owners of the lot.
- (b) Votes allocated to a lot may be cast pursuant to valid proxy executed by a lot owner. If a lot is owned by more than one (1) person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a valid proxy. A lot owner may not revoke a proxy given pursuant to this section, except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated

or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term.

(c) Unless stated in the declaration of bylaws, each lot shall have one vote. Cumulative voting shall not be allowed.

(d) The acts approved by a majority of the votes cast at a meeting of the association at which a quorum is present shall constitute the acts of the owners, except when approval by a greater number of owners is required by the declaration or bylaws.

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

(1) Except as provided in the declaration, the bylaws, or subsection (2) of this section, the board of directors may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board shall act in accordance with Section 8 of this Act.

(2) The board of directors shall not act on behalf of the association to amend the declaration, to terminate the planned community, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of the directors, but the board of directors may select individuals to fill vacancies for unexpired portions of any board term. This section shall in no way limit the power or authority of the declarant as set forth in the declaration with respect to the items set forth in this section.

(3) After the termination of the declarant control period, unless the bylaws specify otherwise, a quorum is deemed present throughout any meeting of the board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting. For the purposes of determining quorum or casting votes, directors shall not use proxies.

(4) After the termination of the declarant control period, the board of directors shall

adopt an annual budget for the planned community, and shall:

(a) Provide a summary of the budget to all owners within thirty (30) days after the adoption; and

(b) Set a date for a meeting of the association to consider ratification of the budget, if the adopted budget contains an increase of greater than fifteen percent (15%) from the previous year's budget. The meeting shall not be less than fourteen (14) days nor more than thirty (30) days after the summary has been provided. The budget shall be deemed ratified, whether or not a quorum is present, unless at that meeting a majority of all owners, or any larger percentage of owners as specified in the declaration or bylaws, rejects the budget. If the budget is rejected, the existing budget shall be continued until a subsequent budget is adopted by the board of directors in conformity with this subsection.

(5) For budgets adopted after the effective date of this Act, the provisions of subsection (4) of this section shall override any limitations on the amount of assessments or limitation on the amount of annual increases that may be contained in existing declarations, bylaws, or rules and regulations of any planned community.

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

(1) A board of directors of an association shall elect officers from the members of the board, to include a president, secretary, treasurer, and other officers as the board designates.

(2) A board may act in all instances on behalf of an association unless otherwise provided in Sections 1 to 27 of this Act, the declaration, or bylaws. The board may, by majority vote, appoint persons to fill vacancies in its membership for the unexpired portion of any term.

- (3) After the termination of the declarant control period, the board shall call a meeting of the association at least once each year. Special meetings may be called by the president, a majority of the board, owners representing twenty percent (20%) of the owners of all lots in the association, or any lower share of the voting power as the declaration or bylaws specify.
- (4) The board may hold a meeting by any method of communication, including electronic or telephonic communication, provided that each member of the board can hear or read in real time and participate and respond to every other member of the board.
- (5) In lieu of conducting a meeting, the board may take an action with the unanimous written consent of the members of the board. Any written consent shall be filed with the minutes of the meetings of the board.
- (6) No owner other than a director may participate in any discussion or deliberation of a meeting of the board of directors unless the board expressly authorizes that owner to participate.
- (7) The board of directors of an association shall comply with all applicable state and federal laws concerning the prohibitions against discrimination on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry. No private right of action additional to those conferred by the applicable state and federal antidiscrimination laws is conferred on any aggrieved individual by this subsection.

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

- (1) A board member shall discharge his or her duties as an officer or a member of the board of directors, including his or her duties as a member of a committee in good faith, on an informed basis, and in a manner he or she honestly believes to be in the best interests of the association.

- (2) A board member shall be considered to discharge his or her duties on an informed basis if he or she makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the association, or into a particular action to be taken or decision to be made.
- (3) In discharging his or her duties, a board member shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (a) One (1) or more officers or employees of the association whom the board member honestly believes to be reliable and competent in the matters presented;
- (b) Legal counsel, certified public accountants, or other persons as to matters the director honestly believes are within the person's professional or expert competence; or
- (c) A committee of the board of directors of which he or she is not a member if the board member honestly believes the committee merits confidence.
- (4) A board member of an association shall not be considered to act in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (3) of this section unwarranted.
- (5) In addition to any other limitation on a board member's liability for monetary damages contained in any provision of the association's articles of incorporation adopted in accordance with state law, any action taken as a board member, or any failure to take any action as a board member, shall not be the basis for monetary damages or injunctive relief unless:
- (a) The board member has breached or failed to perform the duties of the board member's office in compliance with this section; and
- (b) In the case of an action for money damages, the breach or failure to

perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.

(6) A person bringing an action for monetary damages under this section shall have the burden of proving:

(a) The provisions of subsection (5) of this section by clear and convincing evidence; and

(b) That the breach or failure to perform was the legal cause of the damages suffered.

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

(1) Unless otherwise specified in the declaration, after the period of declarant control has ended, the owners may amend the declaration by the consent of a majority of the owners of all lots of the planned community, either in writing or in a meeting called for that purpose. No amendment to the declaration is effective until filed in the office of the county recorder.

(2) Unless otherwise specified in the declaration, after the period of declarant control has ended, the board of directors may amend the bylaws by the consent of a majority of the board of directors.

(3) A vote to terminate the applicability of the declaration and to dissolve the planned community shall be in accordance with the terms of the declaration or the amendment provision set forth in subsection (1) of this section.

(4) An action to challenge the validity of any amendment to the declaration or bylaws adopted by the declarant or the association shall not be brought more than one (1) year after the amendment is recorded.

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

(1) Unless otherwise provided in the declaration or bylaws, the association, through

its board of directors shall:

(a) Annually adopt and amend an estimated budget for revenues and expenditures. Any budget shall include reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments; and

(b) Collect assessments for common expenses from owners in accordance with Section 16 of this Act.

(2) Commencing not later than the time of the first conveyance of a lot to a person other than a declarant, the association shall maintain all of the following to the extent reasonably available and applicable:

(a) Property insurance on the common areas;

(b) Liability insurance pertaining to the common areas; and

(c) Other insurance as defined or required under the declaration.

(3) The association shall keep all of the following:

(a) A complete set of financial records in accordance with the provisions of Section 12 of this Act;

(b) Records showing the collection of 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, supplies, and service providers;

(d) Minutes of the meetings of the association and the board of directors; and

(e) Records of the names and mailing addresses of the owners. It shall be the owner's sole responsibility to maintain with the association secretary or the association's designees, the owner's most current mailing address and contact information.

(4) An association, through its board of directors, in addition to the rights stated in the declaration and bylaws, may:

- (a) Hire and fire management personnel, attorneys, accountants, and other independent professionals and employees that the board determines are necessary or desirable in the management of the property and the association;
- (b) Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the association, the board of directors, or the property, or that involves two (2) or more owners and relates to matters affecting the property;
- (c) Enter into contracts and incur liabilities relating to the operations of the property;
- (d) Pursuant to Section 17 of this Act, enforce all provisions of the declaration, bylaws, covenants, conditions, restrictions, and articles of incorporation governing the lots, and common areas;
- (e) Adopt and enforce rules that regulate the maintenance, repair, replacement, modification, and appearance of common areas, and any other rules as the declaration provides;
- (f) Acquire, encumber, and convey or otherwise transfer real and personal property;
- (g) Hold in the name of the association the real property and personal property;
- (h) Grant easements, leases licenses, and concessions, through or over the common areas;
- (i) Levy and collect fees or other charges for the use, rental or operation of the common areas for services provided to owners;
- (j) Pursuant to Section 17 of this Act, levy the following charges and assessments:

 - 1. Interest and charges for the late payment of assessments;

2. Returned check charges;
 3. Enforcement assessments and fines for violations of the declaration, the bylaws, and any rules and regulations of the association;
 4. Charges for damage to the common areas or other property;
 5. Impose reasonable charges for the preparation and recordation of amendments to the declaration, certificates required by Section 13 of this Act, or statements of unpaid assessments, except that:
 - a. Any fee imposed for the preparation of a certificate shall not exceed the lesser of two hundred twenty-five dollars (\$225) or eighty percent (80%) of the current monthly or annual assessment fee charged that lot by the association; and
 - b. No more than fifty dollars (\$50) shall be charged to update a previous certificate issued in the same fiscal year of the association.
- (k) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;
- (l) Impose reasonable charges for preparing, recording, or copying the declaration, bylaws, amendments to the declaration and bylaws, resale certificates, or statements of unpaid assessments;
- (m) Authorize entry to any portion of the planned community by designated individuals when conditions exist that involve an imminent risk of damage or harm to common areas, another dwelling unit, or to the health or safety of the occupants of that dwelling unit or another dwelling unit;
- (n) Subject to Section 15 of this Act, borrow money and assign the right to common assessments or other future income to a lender as security for a loan to the association;
- (o) Suspend the voting privileges and use of recreational facilities of an owner

who is delinquent in the payment of assessments for more than thirty (30) days;

(p) Purchase directors' and officers' insurance and fidelity bonds the directors consider appropriate and necessary;

(q) Invest excess funds in investments that meet standards for fiduciary investments under the laws of this state; and

(r) Exercise powers that are:

1. Conferred by the declaration or bylaws;

2. Necessary to incorporate the owners' association as a nonprofit incorporation;

3. Permitted to be exercised in this state by a nonprofit corporation; or

4. Necessary and proper to govern and operate the association.

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

(1) Unless otherwise prohibited by Sections 1 to 27 of this Act, any owner may examine and copy the books, records, and minutes of the association, as described in Section 10 of this Act, pursuant to reasonable standards set forth in the declaration, bylaws, or rules and regulations that the board promulgates. The standards may include, but are not limited to, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents.

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

(a) Information that pertains to property-related personnel matters;

(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 currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;

(d) Information that relates to the enforcement of the declaration, bylaws, or rules of the association against other owners;

(e) Information that relates to the collection of assessments or listing of past due owner names, lot numbers, plot numbers, lot addresses, or street addresses; and

(f) Information that shall not be distributed pursuant to federal or state law.

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

(1) The association shall keep financial records sufficiently detailed to enable the association to comply with Section 13 of this Act and, except for the statement of cash receipts and disbursements which shall be kept on a cash basis, all financial statements shall be prepared in accordance with generally accepted accounting principles.

(2) Not 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 cause to be prepared a financial report for the preceding fiscal year. No later than thirty (30) days after the financial report is prepared and received by the board of directors, the association shall make it available for examination by any lot owner, and, upon request and payment of a reasonable fee, shall provide a lot owner with a copy of the financial report.

(3) The type of financial report the association shall have prepared under this section shall be determined as follows:

- (a) An association with total annual revenues of less than one hundred thousand dollars (\$100,000) shall have prepared a financial 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 thousand dollars (\$100,000) but less than two hundred fifty thousand dollars (\$250,000) shall have prepared a financial report under the standards of a compilation by a certified public accountant;
- (c) An association with total revenues of at least two hundred fifty thousand dollars (\$250,000) but less than five hundred thousand dollars (\$500,000) shall have prepared a financial report under the standards of a review by a certified public accountant; and
- (d) An association with total annual revenues of five hundred thousand dollars (\$500,000) or greater shall have prepared a financial report under the standards of an audit by a certified public accountant.

The board of directors of an association, in its sole discretion, may elect to have the financial report required by this subsection prepared in accordance with a higher standard than required for that association's annual revenue level.

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

- (1) A seller of a dwelling unit or lot shall furnish to a purchaser or purchaser's agent before execution of any contract for sale or otherwise before conveyance:
- (a) A copy of the declaration, other than the plots and plans;
- (b) A copy of the bylaws;
- (c) A copy of the rules or regulations of the association; and
- (d) A certificate, current to the date of issuance and signed and dated by the association's manager or authorized agent, which contains:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the lot;
2. A statement setting forth the amount and frequency of the common expense assessment and any unpaid common expense, emergency assessment, or special assessment currently due and payable from the selling lot owner;
3. A statement of any other fees payable by owners;
4. A statement of any capital expenditures anticipated by the association for the current and, if known, next two (2) fiscal years;
5. A statement of the amount of any reserves for capital expenditures, if any, and of any portions of those reserves designated by the association for any specified projects;
6. The most recent regularly prepared and approved balance sheet and income and expense statement, if any, of the association;
7. The current operating budget of the association;
8. The date of the most current financial report prepared for the association pursuant to Section 12 of this Act;
9. A statement of any unsatisfied judgments against the association, the status of any pending suits in which the association is a defendant, or any pending suits in which the association is a named party and the amount in dispute or contest is more than ten thousand dollars (\$10,000);
10. A statement describing any insurance coverage maintained by the association or an attachment of a certificate of insurance issued to the association; and
11. If any portion of the lot is situated upon a leasehold estate, a statement

of the remaining term of any leasehold estate affecting the planned community and the provisions governing any extension or renewal thereof;

12. The name, mailing address, and phone number of the individual responsible for providing the certificate; and

13. In those instances when there is no declarant or board of directors actively carrying out the duties of the association and the association has an inactive standing with the Secretary of State's office or local county clerk's office, the seller of the property may sign and date the certificate.

(2) (a) The association shall, within ten (10) days after the receipt of a written request by a lot owner, furnish a certificate containing the information necessary to enable the owner to comply with paragraph (d) of subsection (1) of this section.

(b) A lot owner or lot owner's agent providing a purchaser with the certificate issued pursuant to this subsection shall not be liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(3) (a) A lot owner or lot owner's agent shall not be liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the sales contract is voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever occurs first.

(b) Notwithstanding paragraph (a) of this subsection, if the sales certificate set forth in this section is not provided by the declarant to the initial lot purchaser, the purchase contract between the declarant and a lot purchaser shall be voidable for ten (10) days following the execution of the purchase

contract.

(4) The certificate referred to in this section shall not be required in the case of:

(a) A gratuitous disposition of a lot;

(b) A disposition pursuant to a court order;

(c) A disposition by a government or governmental agency;

(d) A disposition by foreclosure or deed in lieu of foreclosure;

(e) A disposition to a person in the business of selling real estate who intends to offer those lots to purchasers, and where the purchaser has modified or waived the requirements of this section by agreement; or

(f) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

(5) An association may not deny the validity of any statement in the certificate.

(6) Failure to provide a certificate does not void a deed to a purchaser.

(7) A reasonable fee may be charged in accordance with Section 10 of this Act.

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

(1) Unless otherwise provided by the declaration, the association is responsible for reasonable maintenance, repair, and replacement of the common areas, and each owner is responsible for maintenance, repair, and replacement of the owner's lot and improvements to that lot, including the dwelling unit and the utility lines serving that dwelling unit.

(2) An owner shall permit agents or employees of the association and other owners access through the owner's lot and dwelling unit for the purpose of fulfilling the association's duties and obligations. Any damage to the common areas, lot, or dwelling unit due to that access is the responsibility of the owner that caused the damage or the association if it is responsible for the damage. That owner, or the association, is liable for the prompt repair of any damage and, if not repairable,

for the value of the damaged property or item as it existed immediately prior to that damage.

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

(1) The association may not assign the right to common assessments, or the future income from those assessments, or convey any security interest in any portion of the common areas unless the declaration specifically provides for such a conveyance or a majority of the lot owners of the planned community, or any larger percentage the declaration specifies, approves the conveyance at a meeting of the association duly called for that purpose.

(2) The board of directors, on behalf of the association, has all powers necessary and appropriate to effect a conveyance or encumbrance that subsection (1) of this section permits, including the power to execute a deed or other instrument.

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

(1) (a) In accordance with its declaration, all costs the association incurs in the administration, governance, and maintenance of a planned community are common expenses. Unless otherwise provided in the declaration, all costs of the administration, operation, maintenance, repair, and replacement of the common areas are common expenses.

(b) The common expense liability of each lot shall be allocated in accordance with the allocation set forth in the declaration. If the declaration does not establish any allocation, the common expense liability shall be allocated equally among the lots.

(c) The board of directors shall assess the common expense liability for each lot at least annually, based on a budget the board adopts at least annually in accordance with Section 6 of this Act.

(d) After termination of the declarant control period, the board must abide by subsection (3) of Section 6 of this Act for any increase of any assessment for common expenses.

(2) The board may charge interest or late fees on any past due assessment or installment at the rate the board establishes, not to exceed any maximum rate permitted by law.

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

(1) An association may assess an individual lot for:

(a) Enforcement assessments, fines, and individual assessments for utility service that are imposed or levied in accordance with the declaration, as well as expenses the board incurs in collecting those assessments;

(b) Costs of maintenance, repair, or replacement incurred due to the willful or negligent act of an owner or occupant of a lot or their family, tenants, guests, or invitees, including, but not limited to, attorney's fees, courts costs, and other expenses;

(c) Costs associated with the enforcement of the declaration, bylaws, or the rules and regulations of the association, including, but not limited to, reasonable attorney's fees, courts costs, and other expenses; and

(d) Costs or charges the declaration, bylaws, or rules and regulations permit.

(2) Unless otherwise provided by the declaration, bylaws, or rule and regulations, the association shall, in the following order, credit any amount it receives from a lot owner pursuant to this section:

(a) To the oldest principal amounts the owner owes to the association for the common expenses chargeable against the dwelling unit or lot;

(b) To the interest or late fees owed to the association;

(c) To fines or enforcement assessments owed to the association; and

- (d) To collection costs and reasonable attorney's fees, the association incurred in collecting the assessment.
- (3) Prior to imposing a charge for fines, damages, or an enforcement assessment pursuant to this section, the board of directors shall give the owner written notice that includes:
- (a) A description of the property damage or violation;
- (b) The amount of the proposed charge or assessment;
- (c) A statement that the owner has a right to request a hearing in accordance with subsection (4) of this section before the board to contest the proposed charge, fine, or assessment;
- (d) A statement setting forth the procedures to request a hearing; and
- (e) A reasonable date by which the owner must cure a continuing violation to avoid the proposed charge, fine, or assessment, when an opportunity to cure is applicable.
- (4) (a) To request a hearing, the owner shall deliver a written notice to the board not later than ten (10) days after receiving the notice required by this section.
- (b) If an owner requests a hearing, at least seven (7) days prior to the hearing the board shall provide the owner with a written notice that includes the date, time, and location of the hearing.
- (c) The board shall not levy a charge or assessment before holding any hearing requested pursuant to this section. If the owner fails to make a timely request for a hearing, the right to that hearing is waived, and the board immediately may impose a charge for fines, damages, or an enforcement assessment pursuant to this section.
- (d) Within thirty (30) days following a requested hearing at which the board imposes a charge or assessment, the association shall deliver a written

notice of the charge or assessment to the owner.

(e) Any written notice that this section requires shall be delivered to the owner or any occupant of the dwelling unit by personal delivery, by certified mail, return receipt requested, or by regular mail at an address registered with the association.

(f) With respect to multiple charges for fines, damages, or an enforcement assessment pursuant to this section all relating to the same violation or violations noticed at the same time, multiple hearings are not required.

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

(1) (a) In addition to all other assessments which are authorized in the declaration, the board of directors of an association shall have the power to levy a special assessment against its lot owners if the purpose in doing so is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and other areas of association responsibility expressly provided for in the declaration, including capital expenditures.

(b) After the termination of the declarant control period, an affirmative vote of sixty percent (60%) of the full board of directors shall be required to approve a special assessment.

(2) (a) After the termination of the declarant control period, the board of directors shall hold a meeting of the association within thirty (30) days of passage of a special assessment for the purpose of allowing lot owners an opportunity to rescind or reduce the special assessment.

(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.

- (3) 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 fiduciary duty is rescinded or reduced by the owners pursuant to this section, and the association shall indemnify the director or officer against any damage resulting from any claimed breach of fiduciary duty arising from that circumstance.
- (4) The failure of a lot owner to pay the special assessment shall entitle the association to a lien as provided in Section 20 of this Act as well as any other rights afforded to a creditor under law.
- (5) (a) The failure of a lot owner to pay the special assessment allowed by subsection (1) of this section shall provide the association with the right to deny the lot owner access to any or all of the common areas.
- (b) Notwithstanding paragraph (a) of this subsection, direct access to the lot owner's lot over any road within the planned community which is a common area, shall not be denied to the lot owner.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves may be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

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

(1) The declaration may provide that the association has a lien upon the estate or interest in any lot for the nonpayment of any assessment or charge levied in accordance with Sections 17 or 18 of this Act, as well as any related interest, fines, administrative late fees, enforcement assessments, collection costs, and

reasonable attorney's fees, that are chargeable against the lot and that remain unpaid ten (10) days after any portion has become due and payable.

(2) All of the following apply to a lien charged and filed against a lot pursuant to this section:

(a) The lien is a continuing lien upon the lot against which each assessment or charge is made, subject to automatic subsequent adjustments reflecting any additional unpaid interest, administrative late fees, fines, enforcement assessments, collection costs, reasonable attorney's fees, and court costs;

(b) The lien is 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 or unless it is discharged by the final judgment or order of a court in an action brought to discharge the lien as provided in this section; and

(c) The lien is prior to any lien filed, except liens for real estate taxes and assessments and liens or mortgages that have been filed for record prior to the recording of the lien, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the association.

(3) (a) In any foreclosure action that the holder of a lien commences, the holder shall name the association as a defendant in the action. The association or the holder of the lien is entitled to the appointment of a receiver to collect rental payments due on the lot. Any rental payment a receiver collects during the pendency of the foreclosure action shall be applied first to the payment of the portion of the common expenses chargeable to the lot during the foreclosure action.

(b) Unless prohibited by the declaration or the bylaws, following any foreclosure action, the association or an agent the board authorizes is entitled to become a purchaser at the foreclosure sale.

(c) A mortgage on a lot may contain a provision that secures and grants similar

priority for the mortgagee's advances for the payment of the portion of the common expenses chargeable against the lot upon which the mortgagee holds the mortgage.

(4) An owner may commence an action for the discharge of the lien in the county in which all or a part of the property is situated if the owner believes that the liability for the unpaid assessment or charge for which the association filed a certificate of lien was improperly charged. In the action, if it is finally determined that the unpaid amount of the assessment or charge was improperly charged to the owner or the lot, the court shall enter an order that it determines to be just, which may provide for a discharge of record of all or a portion of the lien.

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

(1) The association and 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 and the rules of the association, as lawfully amended. Any violation is grounds for the association or any owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action.

(2) Owners shall be responsible for the conduct of their residents, tenants, and persons occupying the dwelling unit and shall exercise all control necessary to see that occupants abide by the covenants, restrictions, and rules. Owners are responsible for the payment of all charges, assessments, damages, or fines that the association may levy against the lot due to the misconduct of their residents, tenants, or persons occupying the dwelling unit.

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

- (1) Neither the association nor any lot owner except the declarant shall be liable for that declarant's torts in connection with any part of the planned community which that declarant has the responsibility to maintain.
- (2) An action alleging a wrong committed by the association shall be brought against the association and not against any lot owner.
- (3) If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association shall be held liable to the association or to any lot owner:
- (a) For all tort losses not covered by insurance suffered by the association or that lot owner; and
- (b) For all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission.
- (4) Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A lot owner is not precluded from bringing an action contemplated by this section because he or she is a lot owner or a member or officer of the association. Liens resulting from judgments against the association shall be governed by Section 20 of this Act.

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

In any action relating to the common areas or to any right, duty, or obligation possessed or imposed upon the association by statute or otherwise, the association may sue or be sued as a separate legal entity. Service of summons or other process may be made upon the association by serving the process personally upon the president of the board of directors or the person named as statutory agent of the association if it is an incorporated entity. Any action brought by or on behalf of the association shall be pursuant to authority granted by the board of directors.

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

(1) When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment shall be paid to the association, which shall be a party in interest in the condemnation proceeding. Except to the extent the declaration or any rules and regulations duly adopted otherwise provide, the board of directors shall have the authority to:

(a) Negotiate with the condemning authority;

(b) Agree to an award or payment amount with the condemning authority without instituting condemnation proceedings, and convey the subject common area to the condemning authority; and

(c) Execute and record the deed of conveyance to the condemning authority.

(2) A member of the association, by virtue of his membership, shall be stopped from contesting the action of the association in any proceeding held pursuant to this section.

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

Sections 1 to 27 of this Act shall be construed to establish a uniform framework for the operation and management of planned communities in this state and to supplement any planned community governing document that is in existence on the effective date of this Act. In the event of a specific conflict between Sections 1 to 27 of this Act and express requirements or restrictions in an existing, recorded governing document, the governing document shall control. Sections 1 to 27 of this Act shall control if any governing document is silent with respect to any provision of Section 1 to 27 of this Act.

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

(1) Sections 1 to 27 of this Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of Sections 1 to 27 of this Act are:

(a) To establish and modernize the law governing planned communities;

(b) To make uniform the law among the various jurisdictions;

(c) To provide consumer disclosure regarding planned communities; and

(d) To establish management standards for planned communities.

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

Sections 1 to 27 of this Act shall be known and may be cited as the Kentucky Planned Community Act.