

1 AN ACT relating to common interest 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 22 of this Act:*

6 *(1) "Assessment" means the sum attributable to each unit and due to the association*  
7 *pursuant to the budget adopted under Section 20 of this Act;*

8 *(2) "Association" means the unit owners association;*

9 *(3) "Bylaws" means the instruments, however denominated, that contain the*  
10 *procedures for conduct of the affairs of the association, regardless of the form in*  
11 *which the association is organized, including any amendments to the*  
12 *instruments;*

13 *(4) "Common expense liability" means the liability for common expenses allocated*  
14 *to each unit;*

15 *(5) "Common expenses" means expenditures made by, or financial liabilities of, the*  
16 *association, together with any allocations to reserves;*

17 *(6) "Common interest community" means a real property development, other than a*  
18 *condominium as defined in KRS 381.9105, composed of individual lots for which*  
19 *a deed, common plan, or declaration requires:*

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

22 *(b) That owners or the owners association holds or leases property or facilities*  
23 *for the benefit of the owners; or*

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

26 *(7) "Declarant" means a person or group of persons acting in concert that:*

27 *(a) As part of a common promotional plan, offers to dispose of the interest of*

1 the person or group of persons in a unit not previously disposed of; or

2 (b) Reserves or succeeds to any declarant right;

3 (8) "Declaration" means the instrument, however denominated, that creates a  
4 common interest community, including any amendments to that instrument;

5 (9) "Executive board" means the body, regardless of name, designated in the  
6 declaration or bylaws which has power to act on behalf of the association;

7 (10) "Limited common element" means a portion of the common elements allocated  
8 for the exclusive use of one (1) or more but fewer than all of the units;

9 (11) "Record," used as a noun, means information that is inscribed on a tangible  
10 medium or that is stored in an electronic or other medium and is retrievable in  
11 perceivable form;

12 (12) "Residential purposes" means use for dwelling or recreational purposes, or both;

13 (13) "Rule" means a policy, guideline, restriction, procedure, or regulation of an  
14 association, however denominated, which is not set forth in the declaration or  
15 bylaws and which governs the conduct of persons or the use or appearance of  
16 property;

17 (14) "Unit" means a physical portion of the common interest community designated  
18 for separate ownership or occupancy; and

19 (15) "Unit owner" means a person that owns a unit.

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

22 Except as expressly provided in Sections 1 to 22 of this Act, the effect of its provisions  
23 may not be varied by agreement, and rights conferred by it may not be waived.

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

26 Every contract or duty governed by Sections 1 to 22 of this Act imposes an obligation of  
27 good faith in its performance or enforcement.

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

3       *(1) A declarant shall record the declaration for a common interest community in the*  
4       *county clerk's office of every county in which the common interest community is*  
5       *located.*

6       *(2) The declaration shall include:*

7           *(a) The name of the common interest community;*

8           *(b) The name of the association formed in accordance with Section 7 of this*  
9           *Act;*

10          *(c) A statement that the bylaws adopted under Section 10 of this Act shall be*  
11          *recorded;*

12          *(d) A description of the real property included in the common interest*  
13          *community;*

14          *(e) A description of any special declarant rights other than the rights described*  
15          *under subsections (3) and (4) of this section;*

16          *(f) A statement of the number of votes allocated to each unit;*

17          *(g) A method of determining the liability of each unit for common expenses;*

18          *(h) A statement of when the units, including units owned by the declarant,*  
19          *become subject to assessment;*

20          *(i) A statement of any restriction on the use, maintenance, or occupancy of*  
21          *units;*

22          *(j) A statement of the use, residential or otherwise, for which each unit is*  
23          *intended;*

24          *(k) A description of any contemplated improvements which the declarant*  
25          *agrees to build, or a statement that the declarant does not agree to build any*  
26          *improvement or does not choose to limit the declarant's rights to add*  
27          *improvements not described in the declaration;*

- 1        (l) A statement of any period of declarant control in accordance with  
2                subsection (3) of Section 7 of this Act, or other special declarant rights  
3                reserved by the declarant; and
- 4        (m) Any provisions restricting a right of the association with respect to the  
5                common property, or an individual unit owner with respect to the unit or  
6                improvements, including but not limited to:
- 7                1. A right to divide the unit or to combine it with other units;  
8                2. A right to repair or restore improvements on the lot at the owner's  
9                discretion in the event of damage or destruction;  
10                3. The requirement for architectural controls, including but not limited  
11                to fencing, landscaping, and choice of exterior colors and materials of  
12                structures to be placed on the common property or unit; and  
13                4. The requirement of review of any plans of any structure to be placed  
14                on the common property or unit.
- 15        (3) If the declarant reserves the right to expand the planned community by annexing  
16                lots or common property or by creating additional lots or common property by  
17                developing existing property in the planned community, the declaration shall  
18                contain, in addition to the provisions required under subsection (2) of this  
19                section, a general description of the plan of development including:
- 20                (a) The procedure by which the planned community will be expanded;  
21                (b) The maximum number of lots and units to be included in the planned  
22                community, or a statement that there is no limitation on the number of lots  
23                or units which the declarant may create or annex to the planned  
24                community;
- 25                (c) A general description of the nature and proposed use of any common  
26                property which the declarant agrees to create or annex to the planned  
27                community, or a statement that there is no limitation on the right of the

1 declarant to create or annex common property;

2 (d) The method of allocation of votes if additional lots are to be created or  
3 annexed to the planned community; and

4 (e) The formula to be used for reallocating the common expenses if additional  
5 lots are to be created or annexed to the planned community, and the  
6 manner of reapportioning the common expenses if lots are created or  
7 annexed during the fiscal year.

8 (4) If the declarant may withdraw property from the planned community, the  
9 declaration shall include in addition to the provisions required under subsections  
10 (2) and (3) of this section:

11 (a) The procedure by which property will be withdrawn;

12 (b) A general description of the property which may be withdrawn from the  
13 planned community;

14 (c) The method of allocation of votes if lots are withdrawn from the planned  
15 community;

16 (d) The formula to be used for reallocating the common expenses if the  
17 property to be withdrawn has been assessed for common expenses prior to  
18 withdrawal; and

19 (e) The date after which the right to withdraw property from the planned  
20 community shall expire or a statement that such a right shall not expire.

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

23 (1) Except as otherwise provided in Sections 1 to 22 of this Act, Sections 1 to 22 of  
24 this Act applies to all common interest communities created in this state after the  
25 effective date of this Act that contain twelve (12) or more units that may be used  
26 for residential purposes.

27 (2) For common interest communities that contain twelve (12) or more units that

1 may be used for residential purposes created in this state before the effective date  
2 of this Act, Sections 1 to 22 of this Act applies only with respect to events and  
3 circumstances occurring after the effective date of this Act and does not  
4 invalidate existing provisions of the declaration, bylaws, plats, and plans of those  
5 common interest communities.

6 (3) The declaration, bylaws, plats, and plans of any common interest community  
7 created before the effective date of this Act may be amended to achieve any result  
8 permitted by Sections 1 to 22 of this Act, regardless of what applicable law  
9 provided before the effective date of this Act.

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

12 (1) An arrangement between the associations for two (2) or more common interest  
13 communities, or between an association and the owner of real estate that is not  
14 part of a common interest community, to share costs or activities specified in  
15 their arrangement or declarations does not create a separate common interest  
16 community. However, assessments required by the arrangement shall be included  
17 in the periodic budget for the common interest communities, and the  
18 arrangement shall be disclosed in all public offering statements and resale  
19 certificates required by Sections 1 to 22 of this Act.

20 (2) A covenant that requires the owners of separately owned parcels of real estate to  
21 share costs or other obligations associated with a party wall, driveway, well, or  
22 other similar use does not create a common interest community unless the  
23 owners otherwise agree.

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

26 (1) No later than the date the first unit in the common interest community is  
27 conveyed to a bona fide purchaser for value, the declarant shall:

- 1        (a) Organize a unit owners association with association membership consisting  
2                of all unit owners;
- 3        (b) Adopt, on behalf of the association, initial bylaws which meet the  
4                requirements of Section 10 of this Act; and
- 5        (c) Record the initial bylaws in the county clerk's office of every county in  
6                which the common interest community is located.
- 7        (2) Unless otherwise provided, a board of directors may carry out any action this  
8                chapter requires or allows an owners association to take, subject to any vote  
9                required of the owners.
- 10       (3) (a) The declaration may provide for a period of declarant control of the  
11                association, during which period the declarant or the declarant's designee  
12                may appoint and remove the members of the executive board. Regardless of  
13                the period provided for in the declaration, a period of declarant control  
14                terminates no later than the earlier of:
- 15                1. Sixty (60) days after conveyance of seventy-five percent (75%) of the  
16                units which may be created to unit owners other than a declarant;
- 17                2. Two (2) years after all declarants have ceased to offer units for sale in  
18                the ordinary course of business;
- 19                3. Two (2) years after any development right to add new units was last  
20                exercised; or
- 21                4. Seven (7) years after the first unit was conveyed to a unit owner other  
22                than a declarant.
- 23        (b) A declarant may voluntarily surrender the right to appoint and remove  
24                officers and members of the executive board before termination of that  
25                period, but he or she may then require, for the duration of the period of  
26                declarant control, that specified actions of the association or executive  
27                board, as described in a recorded instrument executed by the declarant, be

1 approved by the declarant before they become effective.

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

4 (1) Regardless of the powers and duties of the association described in the  
5 declaration and bylaws, the association:

6 (a) Shall adopt and may amend bylaws and may adopt and amend rules;

7 (b) Shall adopt and may amend budgets;

8 (c) May require that disputes between the association and unit owners or  
9 between two (2) or more unit owners regarding the common interest  
10 community be submitted to nonbinding alternative dispute resolution as a  
11 prerequisite to commencement of a judicial proceeding;

12 (d) Shall promptly provide notice to the unit owners of any legal proceedings in  
13 which the association is a party other than proceedings involving  
14 enforcement of rules or to recover unpaid assessments or other sums due  
15 the association;

16 (e) Shall establish a reasonable method for unit owners to communicate among  
17 themselves and with the executive board concerning the association;

18 (f) May suspend any right or privilege of a unit owner that fails to pay an  
19 assessment, but shall not:

20 1. Deny a unit owner or other occupant access to the owner's unit;

21 2. Suspend a unit owner's right to vote;

22 3. Prevent a unit owner from seeking election as a director or officer of  
23 the association; or

24 4. Withhold services provided to a unit or a unit owner by the association  
25 if the effect of withholding the service would be to endanger the  
26 health, safety, or property of any person; and

27 (g) May exercise all other powers that may be exercised in this state by



1           organizations of the same type as the association.

2   (2) The executive board may determine whether to take enforcement action by  
3   exercising the association's power to impose sanctions or commencing an action  
4   for a violation of the declaration, bylaws, and rules, including whether to  
5   compromise any claim for unpaid assessments or other claim made by or against  
6   it. The executive board does not have a duty to take enforcement action if it  
7   determines that, under the facts and circumstances presented:

8   (a) The association's legal position does not justify taking any or further  
9   enforcement action;

10   (b) The covenant, restriction, or rule being enforced is, or is likely to be  
11   construed as, inconsistent with law;

12   (c) Although a violation may exist or may have occurred, it is not so material as  
13   to be objectionable to a reasonable person or to justify expending the  
14   association's resources; or

15   (d) It is not in the association's best interests to pursue an enforcement action.

16   (3) The executive board's decision under subsection (2) of this section not to pursue  
17   enforcement under one (1) set of circumstances does not prevent the executive  
18   board from taking enforcement action under another set of circumstances, but  
19   the executive board may not be arbitrary or capricious in taking enforcement  
20   action.

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

23   (1) (a) In the performance of their duties, officers and members of the executive  
24   board appointed by the declarant shall exercise the degree of care and  
25   loyalty to the association required of a trustee.

26   (b) Officers and members of the executive board not appointed by the declarant  
27   shall exercise the degree of care and loyalty to the association required of

1 an officer or director of a corporation organized, and are subject to the  
 2 conflict of interest rules governing directors and officers, under KRS  
 3 273.161 to 273.390. The standards of care and loyalty described in this  
 4 section apply regardless of the form in which the association is organized.

5 (2) An association shall have an executive board created in accordance with its  
 6 declaration or bylaws. Except as otherwise provided in the declaration, the  
 7 bylaws, subsection (3) of this section, or other provisions of Sections 1 to 22 of  
 8 this Act, the executive board acts on behalf of the association.

9 (3) The executive board shall not:

10 (a) Amend the declaration, except as provided by law other than Sections 1 to  
 11 22 of this Act;

12 (b) Amend the bylaws;

13 (c) Terminate the common interest community;

14 (d) Elect members of the executive board, but may fill vacancies in its  
 15 membership for the unexpired portion of any term or, if earlier, until the  
 16 next regularly scheduled election of executive board members; or

17 (e) Determine the qualifications, powers, duties, or terms of office of executive  
 18 board members.

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

21 (1) The bylaws of the association shall:

22 (a) Provide the number of members of the executive board and the titles of the  
 23 officers of the association;

24 (b) Provide for election by the executive board or, if the declaration requires, by  
 25 the unit owners, of a president, treasurer, secretary, and any other officers  
 26 of the association the bylaws specify;

27 (c) Specify the qualifications, powers and duties, terms of office, and manner of

1 electing and removing executive board members and officers and filling  
 2 vacancies;

3 (d) Specify the powers the executive board or officers may delegate to other  
 4 persons or to a managing agent;

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

7 (f) Specify a method for the unit owners to amend the bylaws;

8 (g) Contain any provision necessary to satisfy requirements in Sections 1 to 22  
 9 of this Act or the declaration concerning meetings, voting, quorums, and  
 10 other activities of the association; and

11 (h) Provide for any matter required by law of this state other than Sections 1 to  
 12 22 of this Act to appear in the bylaws of organizations of the same type as  
 13 the association.

14 (2) Subject to the declaration and Sections 1 to 22 of this Act, the bylaws may provide  
 15 for any other necessary or appropriate matters, including matters that could be  
 16 adopted as rules.

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

19 (1) An association shall hold a meeting of unit owners annually at a time, date, and  
 20 place stated in or fixed in accordance with the bylaws.

21 (2) An association shall hold a special meeting of unit owners to address any matter  
 22 affecting the common interest community or the association if its president, a  
 23 majority of the executive board, or unit owners having at least twenty percent  
 24 (20%) or any lower percentage specified in the bylaws, of the votes in the  
 25 association requests that the secretary call the meeting. If the association does  
 26 not notify unit owners of a special meeting within thirty (30) days after the  
 27 requisite number or percentage of unit owners requests the secretary to do so, the

1 requesting members may directly notify all the unit owners of the meeting. Only  
2 matters described in the meeting notice required by subsection (3) of this section  
3 may be considered at a special meeting.

4 (3) An association shall notify unit owners of the time, date, and place of each  
5 annual and special unit owners meeting not less than ten (10) days nor more  
6 than sixty (60) days before the meeting date. Notice may be by any method  
7 reasonably calculated to provide notice to the person. The notice for any meeting  
8 shall state the time, date, and place of the meeting and the items on the agenda,  
9 including:

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

12 (b) Any budget changes; and

13 (c) Any proposal to remove an officer or member of the executive board.

14 (4) The minimum time to give notice required by subsection (3) of this section may  
15 be reduced or waived for a meeting called to deal with an emergency.

16 (5) Unit owners shall be given a reasonable opportunity at any meeting to comment  
17 regarding any matter affecting the common interest community or the  
18 association.

19 (6) The declaration or bylaws may allow for meetings of unit owners to be conducted  
20 by telephonic, video, or other conferencing process, if the alternative process is  
21 consistent with Section 14 of this Act.

22 (7) Except as otherwise provided in the bylaws, meetings of the association shall be  
23 conducted in accordance with the most recent edition of Robert's Rules of Order  
24 Newly Revised.

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

27 (1) Meetings of the executive board and committees of the association authorized to

1 act for the association shall be open to the unit owners except during executive  
2 sessions. The executive board and those committees may hold an executive  
3 session only during a regular or special meeting of the board or a committee. No  
4 final vote or action shall be taken during an executive session. An executive  
5 session may be held only to:

- 6 (a) Consult with the association's attorney concerning legal matters;  
7 (b) Discuss existing or potential litigation or mediation, arbitration, or  
8 administrative proceedings;  
9 (c) Discuss labor or personnel matters;  
10 (d) Discuss contracts, leases, and other commercial transactions to purchase or  
11 provide goods or services currently being negotiated, including the review of  
12 bids or proposals, if premature general knowledge of those matters would  
13 place the association at a disadvantage; or  
14 (e) Prevent public knowledge of the matter to be discussed if the executive  
15 board or committee determines that public knowledge would violate the  
16 privacy of any person.

17 (2) For purposes of this section, a gathering of board members at which the board  
18 members do not conduct association business is not a meeting of the executive  
19 board. The executive board and its members shall not use incidental or social  
20 gatherings of board members or any other method to evade the open meeting  
21 requirements of this section.

22 (3) During the period of declarant control, the executive board shall meet at least  
23 four (4) times a year. At least one (1) of those meetings shall be held at the  
24 common interest community or at a place convenient to the community. After  
25 termination of the period of declarant control, all executive board meetings shall  
26 be at the common interest community or at a place convenient to the community,  
27 unless the unit owners amend the bylaws to vary the location of those meetings.

- 1 (4) At each executive board meeting, the executive board shall provide a reasonable  
2 opportunity for unit owners to comment regarding any matter affecting the  
3 common interest community and the association.
- 4 (5) Unless the meeting is included in a schedule given to the unit owners or the  
5 meeting is called to deal with an emergency, the secretary or other officer  
6 specified in the bylaws shall give notice of each executive board meeting to each  
7 board member and to the unit owners. The notice shall be given at least ten (10)  
8 days before the meeting and shall state the time, date, place, and agenda of the  
9 meeting.
- 10 (6) If any materials are distributed to the executive board before the meeting, the  
11 executive board at the same time shall make copies of those materials reasonably  
12 available to unit owners, except that the board need not make available copies of  
13 unapproved minutes or materials that are to be considered in executive session.
- 14 (7) Unless the declaration or bylaws otherwise provide, the executive board may meet  
15 by telephonic, video, or other conferencing process if:
- 16 (a) The meeting notice states the conferencing process to be used and provides  
17 information explaining how unit owners may participate in the conference  
18 directly or by meeting at a central location or conference connection; and
- 19 (b) The process provides all unit owners the opportunity to hear or perceive the  
20 discussion and to comment as provided in subsection (4) of this section.
- 21 (8) After termination of any period when the declarant controls the association, unit  
22 owners may amend the bylaws to vary the procedures for meetings described in  
23 subsection (7) of this section.
- 24 (9) Instead of meeting, the executive board may act by unanimous consent as  
25 documented in a record authenticated by all its members. The executive board  
26 promptly shall give notice to all unit owners of any action taken by unanimous  
27 consent. After termination of the period of declarant control, the executive board

1 may act by unanimous consent only to undertake ministerial actions or to  
 2 implement actions previously taken at a meeting of the executive board.

3 (10) Even if an action by the executive board is not in compliance with this section, it  
 4 is valid unless set aside by a court. A challenge to the validity of an action of the  
 5 executive board for failure to comply with this section shall not be brought more  
 6 than sixty (60) days after the minutes of the executive board of the meeting at  
 7 which the action was taken are approved or the record of that action is distributed  
 8 to unit owners, whichever is later.

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

11 (1) Unless the bylaws otherwise provide, a quorum is present throughout any  
 12 meeting of the unit owners if persons entitled to cast twenty percent (20%) of the  
 13 votes in the association:

14 (a) Are present in person or by proxy at the beginning of the meeting;

15 (b) Have cast absentee ballots solicited in accordance with the association's  
 16 procedures which have been delivered to the secretary in a timely manner;

17 or

18 (c) Are present by any combination of paragraphs (a) and (b) of this  
 19 subsection.

20 (2) Unless the bylaws specify a larger number, a quorum of the executive board is  
 21 present for purposes of determining the validity of any action taken at a meeting  
 22 of the executive board only if individuals entitled to cast a majority of the votes on  
 23 that board are present at the time a vote regarding that action is taken. If a  
 24 quorum is present when a vote is taken, the affirmative vote of a majority of the  
 25 board members present is the act of the executive board unless a greater vote is  
 26 required by the declaration or bylaws.

27 (3) Except as otherwise provided in the bylaws, meetings of the association shall be

1 conducted in accordance with the most recent edition of Robert's Rules of Order  
2 Newly Revised.

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

5 (1) Unless the declaration or bylaws provide otherwise, each unit in a common  
6 interest community shall be entitled to one (1) vote.

7 (2) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at  
8 a meeting in person, by absentee ballot pursuant to subsection (3)(d) of this  
9 section, by a proxy pursuant to subsection (4) of this section, or, when a vote is  
10 conducted without a meeting, by electronic or paper ballot pursuant to subsection  
11 (5) of this section.

12 (3) The following requirements apply at a meeting of unit owners:

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

16 (b) If only one (1) of several owners of a unit is present, that owner is entitled to  
17 cast all the votes allocated to that unit. If more than one (1) of the owners  
18 are present, the votes allocated to that unit may be cast only in accordance  
19 with the agreement of a majority in interest of the owners, unless the  
20 declaration expressly provides otherwise. There is majority agreement if one  
21 (1) of the owners casts the votes allocated to the unit without protest being  
22 made promptly to the person presiding over the meeting by any of the other  
23 owners of the unit;

24 (c) Unless a greater number or fraction of the votes in the association is  
25 required by Sections 1 to 22 of this Act or the declaration, a majority of the  
26 votes cast determines the outcome of any action of the association;

27 (d) Subject to subsection (1) of this section, a unit owner may vote by absentee



- 1           ballot without being present at the meeting. The association promptly shall  
2           deliver an absentee ballot to an owner that requests it if the request is made  
3           at least three (3) days before the scheduled meeting. Votes cast by absentee  
4           ballot shall be included in the tally of a vote taken at that meeting; and  
5           (e) When a unit owner votes by absentee ballot, the association must be able to  
6           verify that the ballot is cast by the unit owner having the right to do so.
- 7           (4) Except as otherwise provided in the declaration or bylaws, the following  
8           requirements apply with respect to proxy voting:
- 9           (a) Votes allocated to a unit may be cast pursuant to a directed or undirected  
10           proxy duly executed by a unit owner;
- 11           (b) If a unit is owned by more than one (1) person, each owner of the unit may  
12           vote or register protest to the casting of votes by the other owners of the unit  
13           through a duly executed proxy;
- 14           (c) A unit owner may revoke a proxy given pursuant to this section only by  
15           actual notice of revocation to the person presiding over a meeting of the  
16           association;
- 17           (d) A proxy is void if it is not dated or purports to be revocable without notice;
- 18           (e) A proxy is valid only for the meeting at which it is cast and any recessed  
19           session of that meeting; and
- 20           (f) A person shall not cast undirected proxies representing more than fifteen  
21           percent (15%) of the votes in the association.
- 22           (5) Unless prohibited or limited by the declaration or bylaws, an association may  
23           conduct a vote without a meeting. In that event:
- 24           (a) The association shall notify the unit owners that the vote will be taken by  
25           ballot;
- 26           (b) The association shall deliver a paper or electronic ballot to each unit owner  
27           entitled to vote on the matter;

- 1        (c) The ballot shall set forth each proposed action and provide an opportunity  
2                to vote for or against the action;
- 3        (d) When the association delivers the ballots, it shall also:
- 4                1. Indicate the number of responses needed to meet the quorum  
5                        requirements;
- 6                2. State the percent of votes necessary to approve each matter other than  
7                        election of directors;
- 8                3. Specify the time and date by which a ballot shall be delivered to the  
9                        association to be counted, which time and date may not be fewer than  
10                      three (3) days after the date the association delivers the ballot; and
- 11                4. Describe the time, date, and manner by which unit owners wishing to  
12                        deliver information to all unit owners regarding the subject of the vote  
13                        may do so;
- 14        (e) Except as otherwise provided in the declaration or bylaws, a ballot is not  
15                revoked after delivery to the association by death or disability or attempted  
16                revocation by the person that cast that vote; and
- 17        (f) Approval by ballot pursuant to this subsection is valid only if the number of  
18                votes cast by ballot equals or exceeds the quorum required to be present at a  
19                meeting authorizing the action.
- 20        (6) If the declaration requires that votes on specified matters affecting the common  
21                interest community be cast by lessees rather than unit owners of leased units:
- 22                (a) This section applies to lessees as if they were unit owners;
- 23                (b) Unit owners that have leased their units to other persons shall not cast votes  
24                        on those specified matters; and
- 25                (c) Lessees are entitled to notice of meetings, access to records, and other rights  
26                        respecting those matters as if they were unit owners.
- 27        (7) Unit owners shall also be given notice of all meetings at which lessees are entitled

1 to vote.

2 (8) Votes allocated to a unit owned by the association shall be cast in any vote of the  
3 unit owners in the same proportion as the votes cast on the matter by unit owners  
4 other than the association.

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

7 (1) Regardless of provisions in the declaration, an association shall not commence  
8 an action to foreclose a lien on a unit under this section unless:

9 (a) The unit owner, at the time the action is commenced, owes a sum equal to at  
10 least three (3) months of common expense assessments based on the  
11 periodic budget last adopted by the association pursuant to Section 20 of  
12 this Act and the unit owner has failed to accept or comply with a payment  
13 plan offered by the association; and

14 (b) The executive board votes to commence a foreclosure action specifically  
15 against that unit.

16 (2) Unless the parties otherwise agree, the association shall apply any sums paid by  
17 unit owners that are delinquent in paying assessments in the following order:

18 (a) Unpaid assessments;

19 (b) Late charges;

20 (c) Reasonable attorney's fees and costs and other reasonable collection  
21 charges; and

22 (d) All other unpaid fees, charges, penalties, interest, and late charges.

23 (3) If the only sums due with respect to a unit are fines and related sums imposed  
24 against the unit, a foreclosure action shall not be commenced against the unit  
25 unless the association has a judgment against the unit owner with respect to the  
26 fines and related sums and has perfected a judgment lien against the unit under  
27 KRS 426.010 and 426.720.

1 (4) Every aspect of a foreclosure, sale, or other disposition under this section,  
2 including the method, advertising, time, date, place, and terms, shall be  
3 commercially reasonable.

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

6 (1) The association shall retain the following:

7 (a) Detailed records of receipts and expenditures affecting the operation and  
8 administration of the association and other appropriate accounting records;

9 (b) Minutes of all meetings of its unit owners and executive board other than  
10 executive sessions, a record of all actions taken by the unit owners or  
11 executive board without a meeting, and a record of all actions taken by a  
12 committee in place of the executive board on behalf of the association;

13 (c) The names of unit owners in a form that permits preparation of a list of the  
14 names of all unit owners and the addresses at which the association  
15 communicates with them, in alphabetical order showing the number of  
16 votes each owner is entitled to cast;

17 (d) Its original or restated organizational documents, if required by law other  
18 than Sections 1 to 22 of this Act, bylaws and all amendments to them, and  
19 all rules currently in effect;

20 (e) All financial statements and tax returns of the association for the past three  
21 (3) years;

22 (f) A list of the names and addresses of its current executive board members  
23 and officers;

24 (g) Its most recent annual report delivered to the Secretary of State, if any;

25 (h) Financial and other records sufficiently detailed to enable the association to  
26 comply with other requirements of law;

27 (i) Copies of current contracts to which it is a party;

- 1        (j) Records of executive board or committee actions to approve or deny any  
2                requests for design or architectural approval from unit owners; and
- 3        (k) Ballots, proxies, and other records related to voting by unit owners for one  
4                (1) year after the election, action, or vote to which they relate.
- 5        (2) Subject to subsections (3) and (4) of this section, all records retained by an  
6                association shall be available for examination and copying by a unit owner or the  
7                owner's authorized agent:
- 8                (a) During reasonable business hours or at a mutually convenient time and  
9                location; and
- 10               (b) Upon five (5) days' notice in a record reasonably identifying the specific  
11               records of the association requested.
- 12        (3) Records retained by an association may be withheld from inspection and copying  
13               to the extent that they concern:
- 14               (a) Personnel, salary, and medical records relating to specific individuals;
- 15               (b) Contracts, leases, and other commercial transactions to purchase or provide  
16               goods or services currently being negotiated;
- 17               (c) Existing or potential litigation or mediation, arbitration, or administrative  
18               proceedings;
- 19               (d) Existing or potential matters involving federal, state, or local administrative  
20               or other formal proceedings before a governmental tribunal for  
21               enforcement of the declaration, bylaws, or rules;
- 22               (e) Communications with the association's attorney which are otherwise  
23               protected by the attorney-client privilege or the attorney work-product  
24               doctrine;
- 25               (f) Information the disclosure of which would violate law other than Sections 1  
26               to 22 of this Act;
- 27               (g) Records of an executive session of the executive board; or

- 1        (h) Individual unit files other than those of the requesting owner.
- 2        (4) An association may charge a reasonable fee for providing copies of any records  
 3        under this section and for supervising the unit owner's inspection.
- 4        (5) A right to copy records under this section includes the right to receive copies by  
 5        photocopying or other means, including copies through an electronic  
 6        transmission, if available upon request by the unit owner.
- 7        (6) An association is not obligated to compile or synthesize information.
- 8        (7) Information provided pursuant to this section shall not be used for commercial  
 9        purposes.

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

- 12        (1) Before adopting, amending, or repealing any rule, the executive board shall give  
 13        all unit owners notice of:
- 14        (a) Its intention to adopt, amend, or repeal a rule and provide the text of the  
 15        rule or the proposed change; and
- 16        (b) A date on which the executive board will act on the proposed rule or  
 17        amendment after considering comments from unit owners.
- 18        (2) Following adoption, amendment, or repeal of a rule, the association shall notify  
 19        the unit owners of its action and provide a copy of any new or revised rule.
- 20        (3) An association may adopt rules to establish and enforce construction and design  
 21        criteria and aesthetic standards if the declaration so provides. If the declaration  
 22        so provides, the association shall adopt procedures for enforcement of those  
 23        standards and for approval of construction applications, including a reasonable  
 24        time within which the association shall act after an application is submitted and  
 25        the consequences of its failure to act.
- 26        (4) A rule regulating display of the flag of the United States shall be consistent with  
 27        federal law.

1 (5) The association shall not prohibit display on a unit or on a limited common  
 2 element adjoining a unit of the flag of this state, or signs regarding candidates  
 3 for public or association office or ballot questions, but the association may adopt  
 4 rules governing the time, place, size, number, and manner of those displays.

5 (6) Unit owners may peacefully assemble on the common elements to consider  
 6 matters related to the common interest community, but the association may adopt  
 7 rules governing the time, place, and manner of those assemblies.

8 (7) An association may adopt rules that affect the use of or behavior in units that  
 9 may be used for residential purposes, only to:

10 (a) Implement a provision of the declaration;

11 (b) Regulate any behavior in or occupancy of a unit which violates the  
 12 declaration or adversely affects the use and enjoyment of other units or the  
 13 common elements by other unit owners; or

14 (c) Restrict the leasing of residential units to the extent those rules are  
 15 reasonably designed to meet underwriting requirements of institutional  
 16 lenders that regularly make loans secured by first mortgages on units in  
 17 common interest communities or regularly purchase those mortgages.

18 (8) An association's internal business operating procedures need not be adopted as  
 19 rules.

20 (9) Every rule shall be reasonable.

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

23 (1) An association shall deliver any notice required to be given by the association  
 24 under Sections 1 to 22 of this Act to any mailing or electronic mail address a unit  
 25 owner designates. Otherwise, the association may deliver notices by:

26 (a) Hand delivery to each unit owner;

27 (b) Hand delivery, United States mail postage paid, or commercially reasonable

1 delivery service to the mailing address of each unit;

2 (c) Electronic means, if the unit owner has given the association an electronic  
 3 address; or

4 (d) Any other method reasonably calculated to provide notice to the unit owner.

5 (2) The ineffectiveness of a good faith effort to deliver notice by an authorized means  
 6 does not invalidate action taken at or without a meeting.

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

9 (1) Notwithstanding any provision of the declaration or bylaws to the contrary, unit  
 10 owners present in person, by proxy, or by absentee ballot at any meeting of the  
 11 unit owners at which a quorum is present, may remove any member of the  
 12 executive board and any officer elected by the unit owners, with or without cause,  
 13 if the number of votes cast in favor of removal exceeds the number of votes cast  
 14 in opposition to removal, but:

15 (a) A member appointed by the declarant shall not be removed by a unit owner  
 16 vote during the period of declarant control;

17 (b) If a member may be elected or appointed pursuant to the declaration by  
 18 persons other than the declarant or the unit owners, that member shall be  
 19 removed only by the person that elected or appointed that member; and

20 (c) The unit owners shall not consider whether to remove a member of the  
 21 executive board or an officer elected by the unit owners at a meeting of the  
 22 unit owners unless that subject was listed in the notice of the meeting.

23 (2) At any meeting at which a vote to remove a member of the executive board or an  
 24 officer is to be taken, the member or officer being considered for removal shall  
 25 have a reasonable opportunity to speak before the vote.

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



1 (1) The executive board, at least annually, shall adopt a proposed budget for the  
2 common interest community for consideration by the unit owners. Not later than  
3 thirty (30) days after adoption of a proposed budget, the executive board shall  
4 provide to all the unit owners a summary of the budget, including any reserves,  
5 and a statement of the basis on which any reserves are calculated and funded.  
6 Simultaneously, the board shall set a date not less than ten (10) days nor more  
7 than sixty (60) days after providing the summary for a meeting of the unit owners  
8 to consider ratification of the budget. Unless at that meeting a majority of all unit  
9 owners or any larger number specified in the declaration reject the budget, the  
10 budget is ratified, whether or not a quorum is present. If a proposed budget is  
11 rejected, the budget last ratified by the unit owners continues until unit owners  
12 ratify a subsequent budget.

13 (2) The executive board, at any time, may propose a special assessment. Except as  
14 otherwise provided in subsection (3) of this section, the assessment is effective  
15 only if the executive board follows the procedures for ratification of a budget  
16 described in subsection (1) of this section and the unit owners do not reject the  
17 proposed assessment.

18 (3) If the executive board determines by a two-thirds (2/3) vote that a special  
19 assessment is necessary to respond to an emergency:

20 (a) The special assessment shall become effective immediately in accordance  
21 with the terms of the vote;

22 (b) Notice of the emergency assessment shall be provided promptly to all unit  
23 owners; and

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

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

1 (1) A declarant, association, unit owner, or any other person subject to Sections 1 to  
2 22 of this Act may bring an action to enforce a right granted or obligation  
3 imposed by Sections 1 to 22 of this Act, the declaration, or the bylaws. Punitive  
4 damages may be awarded for a willful failure to comply. The court may award  
5 reasonable attorney's fees and costs.

6 (2) Parties to a dispute arising under Sections 1 to 22 of this Act, the declaration, or  
7 the bylaws may agree to resolve the dispute by any form of binding or nonbinding  
8 alternative dispute resolution, but:

9 (a) A declarant may agree with the association to do so only after the period of  
10 declarant control has expired; and

11 (b) An agreement to submit to any form of binding alternative dispute  
12 resolution shall be in a record authenticated by the parties.

13 (3) The remedies provided by Sections 1 to 22 of this Act shall be liberally  
14 administered to the end that the aggrieved party is put in as good a position as if  
15 the other party had fully performed. However, consequential or special damages  
16 shall not be awarded except as specifically provided in Sections 1 to 22 of this Act  
17 or by other rule of law.

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

20 The principles of law and equity, including the law of corporations, any other form of  
21 organization authorized by the law of this state, and unincorporated associations, the  
22 law of real estate, and the law relative to capacity to contract, principal and agent,  
23 eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,  
24 receivership, substantial performance, or other validating or invalidating cause  
25 supplement the provisions of this Sections 1 to 22 of this Act.