

1 AN ACT relating to residential communities.

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

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

5 *As used in Sections 1 to 28 of this Act:*

6 *(1) (a) "Affiliate of a declarant" means any person who controls, is controlled by,*
7 *or is under common control with a declarant. A person controls a declarant*
8 *if that person:*

9 *1. Is a general partner, officer, director, limited liability entity member or*
10 *manager, or employer of the declarant and has the legal authority to*
11 *direct business and affairs of the declarant;*

12 *2. Directly or indirectly, or acting in concert with one (1) or more other*
13 *persons, or through one (1) or more subsidiaries, owns, controls,*
14 *holds with power to vote, or holds proxies representing, more than*
15 *fifty percent (50%) of the voting interest in the declarant; or*

16 *3. Controls in any manner the election of a majority of the directors of*
17 *the declarant.*

18 *(b) A person is controlled by a declarant if the declarant:*

19 *1. Is a general partner, officer, director, limited liability entity member or*
20 *manager, or employer of the person and has the legal authority to*
21 *direct business and affairs of the declarant;*

22 *2. Directly or indirectly or acting in concert with one (1) or more other*
23 *persons, or through one (1) or more subsidiaries, owns, controls,*
24 *holds with power to vote, or holds proxies representing more than fifty*
25 *percent (50%) of the voting interest in the person; or*

26 *3. Controls in any manner the election of a majority of the directors of*
27 *the person.*

- 1 (c) Control does not exist if the powers described in this subsection are held
2 solely as security for an obligation and are not exercised.
- 3 (2) "Allocated interests" means the undivided interest in common areas, the
4 common expense liability, and votes in the association allocated to each lot.
- 5 (3) "Assessment" means the liability for an expense that is allocated to a lot in a
6 planned community.
- 7 (4) "Association" or "homeowners' association" means a nonprofit corporation or
8 unincorporated organization that is composed of owners of lots in a planned
9 community and is responsible for the administrative governance, maintenance,
10 and upkeep of the planned community, and to which responsibilities are imposed
11 and authority is granted in the declaration.
- 12 (5) "Board of directors" or "board" means the executive body of an association,
13 regardless of name, designated in the declaration or bylaws to act on behalf of an
14 association.
- 15 (6) "Bylaws" means the code or codes of rules adopted for the regulation or
16 management of the affairs of the corporation irrespective of the name or names
17 by which such rules are designated.
- 18 (7) "Common area" means property within a planned community which is owned,
19 leased, or required by the declaration to be maintained or operated by an
20 association for the use of its members and designated as common area in the
21 declaration.
- 22 (8) "Common expense" means any expense or financial liability of the association,
23 including allocations the association designates for reserves.
- 24 (9) "Common expense liability" means the liability for common expenses allocated
25 to each lot pursuant to Section 17 of this Act.
- 26 (10) "Declarant" means any person or group of persons, and their successors and
27 assigns, acting in concert who:

1 (a) Executes and files of record a declaration encumbering real property, or
2 otherwise submits property to a declaration, as part of the establishment or
3 maintenance of a planned community;

4 (b) Is identified as a declarant in a declaration; or

5 (c) Reserves or succeeds to any special declarant right.

6 (11) "Declarant control" means the period of time in which the declarant controls the
7 association by reserving the right to appoint or elect the members of the
8 association's board of directors.

9 (12) "Declaration" means any instrument, however denominated, including but not
10 limited to restrictions, covenants, conditions, or restrictions, and any amendment
11 or supplement thereto, recorded among the land records of the county or counties
12 in which the planned community or any part thereof is located, that either:

13 (a) Imposes on the association restrictions, covenants, conditions, or
14 maintenance or operational responsibilities for the common area; or

15 (b) Creates the authority in the association to impose on lots, or on the owners
16 or occupants of such lots, or on any other entity, an assessment in
17 connection with the provision of maintenance or services for the benefit of
18 some or all of the lots, the owners or occupants of the lots, or the common
19 area.

20 (13) "Development rights" means any right or combination of rights reserved by a
21 declarant in the declaration to:

22 (a) Add real estate to a planned community;

23 (b) Create lots or common areas within a planned community;

24 (c) Subdivide lots or convert lots into common areas;

25 (d) Allocate or reallocate common areas among lots; or

26 (e) Withdraw real estate from a planned community.

27 (14) "Disposition" means a voluntary transfer to a purchaser of any legal or equitable

1 interest in a lot, but does not include the creation, assignment, transfer, or release
2 of a mortgage or security interest.

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

6 (16) "Governing documents" means the articles of incorporation, bylaws, plat,
7 declaration of covenants, conditions, and restrictions, rules, and regulations of a
8 homeowners' association, or other written instrument by which the association
9 has the authority to exercise any of the powers provided for in this section or to
10 manage, maintain, or otherwise affect the property under its jurisdiction.

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

16 (18) "Master association" means an organization described in Section 4 of this Act,
17 whether or not it is also an association described in Section 3 of this Act.

18 (19) "Multi-unit planned community" means a residential community, excluding
19 condominiums, composed of individual lots where two (2) or more dwelling units
20 share at least one (1) common building component such as a wall or roof, and for
21 which a deed, common plan, or declaration requires any of the following:

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

24 (b) That owners or the association hold or lease property or facilities for the
25 benefit of the owners;

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

1 (d) The association is responsible for the exterior maintenance, repair, or
2 replacement of building components.

3 (20) "Owner" means a declarant or other person who owns a lot in a planned
4 community but does not include any person that has an interest in a lot solely as
5 security for an obligation.

6 (21) "Person" means a natural person, corporation, business trust, estate, trust,
7 partnership, association, joint venture, limited liability company, government,
8 governmental subdivision or agency, or other legal or commercial entity.

9 (22) "Planned community" means a residential community, excluding
10 condominiums, composed of individual lots for which a deed, common plan, or
11 declaration requires any of the following:

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

14 (b) That owners or the association hold or lease property or facilities for the
15 benefit of the owners; or

16 (c) That owners support by membership or fees property or facilities for all
17 owners to use.

18 (23) "Purchaser" means any person other than a declarant or a person in the
19 business of selling real estate for his or her own account, who by means of a
20 voluntary or involuntary transfer acquires a legal or equitable interest in a lot.

21 (24) "Real estate" means any fee simple interest, leasehold estate, or other estate or
22 interest in, over, or under land, including structures, fixtures, and other
23 improvements and interests which by custom, usage, or law pass with a
24 conveyance of land though not described in the contract of sale or instrument of
25 conveyance. "Real estate" includes parcels and spaces that may be filled with air
26 or water.

27 (25) "Recording data" means the book and page number of instruments recorded in

1 the office of a county clerk.

2 (26) "Residential" means use for dwelling or personal recreation.

3 (27) "Rule" means a policy, guideline, restriction, procedure, or regulation of an
 4 association, however denominated, which is not set forth in the declaration or
 5 bylaws and which governs the conduct of persons or the use or appearance of
 6 property.

7 (28) "Special declarant rights" means rights reserved for the benefit of a declarant to:

8 (a) Complete improvements indicated on plats and plans filed with the
 9 declaration;

10 (b) Exercise any development rights;

11 (c) Maintain sales offices, maintenance offices, signs advertising the planned
 12 community, or models;

13 (d) Use easements through the common elements for the purpose of making
 14 improvements within the planned community or within real estate which
 15 may be added to the planned community;

16 (e) Make the planned community part of a larger planned community;

17 (f) Make the planned community subject to a master association; or

18 (g) Appoint or remove any officer of the association, master association, or any
 19 board member during any period of declarant control.

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

22 (1) All planned communities in this Commonwealth are subject to the provisions of
 23 Sections 1 to 28 of this Act. Unless otherwise specifically stated, nothing in
 24 Sections 1 to 28 of this Act shall invalidate any provision of a document that
 25 governs a planned community if that provision was in the document at the time
 26 the document was recorded and the document was recorded prior to the effective
 27 date of this Act.

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

5 (3) After the effective date of this Act, the initial board of directors of an
 6 incorporated association as provided in this section shall promulgate the initial
 7 bylaws of the association as part of its organization as provided in KRS 273.191.

8 (4) The declaration or the bylaws for an unincorporated association shall provide for
 9 the following:

10 (a) A mechanism for the election of the board of the association;

11 (b) The number of persons constituting the board;

12 (c) The terms of the directors;

13 (d) The powers and duties of the board;

14 (e) The method of removal of directors from office;

15 (f) The method of amending the declaration and bylaws;

16 (g) The time and place for holding meetings and the manner of and authority
 17 for calling, giving notice of, and conducting meetings; and

18 (h) Any other matters the original declarant or the association deem necessary
 19 and appropriate.

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

22 Unless otherwise stated in the declaration, a homeowners' association shall be
 23 organized no later than the date the first lot in the planned community is conveyed.

24 The membership of the association shall at all times consist exclusively of all the
 25 owners or their heirs, successors, or assigns; provided that an association may at any
 26 time choose to allow non-owner third-parties to have rights and privileges within the
 27 association or the use of its property if it so chooses. The association shall be organized

1 as a nonprofit corporation or as an unincorporated nonprofit association.

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

4 (1) If the declaration for a planned community provides that any of the powers set
5 forth in Section 8 of this Act are to be exercised by or may be delegated to a for-
6 profit or nonprofit corporation or unincorporated association which exercises
7 those or other powers on behalf of one (1) or more planned communities for the
8 benefit of the owners of one (1) or more planned communities, all provisions of
9 Sections 1 to 28 of this Act applicable to homeowners' associations apply to the
10 corporation or unincorporated association, except as indicated in this section.

11 (2) Unless a master association is acting in the capacity of an association described
12 in Section 3 of this Act, it may exercise the powers set forth in Section 8 of this
13 Act only to the extent expressly permitted in the declarations of planned
14 communities which are part of the master association or expressly described in
15 the delegations of power from those planned communities to the master
16 association.

17 (3) If the declaration of any planned community provides that the board may
18 delegate certain powers to a master association, the members of the board shall
19 have no liability for the acts or omissions of the master association with respect to
20 those powers following delegation.

21 (4) The rights and responsibilities of owners with respect to the homeowners'
22 association set forth in Sections 10 and 11 of this act apply in the conduct of the
23 affairs of a master association only to those persons who elect the board of a
24 master association, whether or not those persons are otherwise owners within the
25 meaning of Sections 1 to 28 to of this Act.

26 (5) Notwithstanding the provisions of Section 6 of this Act with respect to the election
27 of the board of an association by all owners after the period of declarant control

1 ends and even if a master association is also an association described in Section 3
 2 of this Act, the certificate of incorporation or other instrument creating the
 3 master association and the declaration of each planned community, the powers of
 4 which are assigned by the declaration or delegated to the master association, may
 5 provide that the board of the master association shall be elected after the period
 6 of declarant control in any of the following ways:

7 (a) All owners of all planned communities subject to the master association
 8 may elect all members of that board;

9 (b) All members of the boards of all planned communities subject to the master
 10 association may elect all members of that board;

11 (c) All owners of each planned community subject to the master association
 12 may elect specified members to that board; or

13 (d) All members of the board of each planned community subject to the master
 14 association may elect specified members of that board.

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

17 Except for Sections 14 and 16 of this Act, all provisions of Sections 1 to 28 of this Act
 18 shall apply to multi-unit planned communities.

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

21 (1) An association shall administer a planned community through a board that:

22 (a) Shall exercise all power and authority of the association. If an owner is not
 23 an individual, any principal, member of a limited liability company, partner,
 24 director, officer, trustee, or employee of the owner may be elected to the
 25 board; and

26 (b) Unless otherwise provided, carries out any action required or allowed under
 27 Sections 1 to 28 of this Act, subject to any vote required of the owners.

- 1 (2) A declarant shall establish an association not later than the date upon which the
2 first lot in the planned community is conveyed to a bona fide purchaser for value.
3 The association shall be organized as a nonprofit corporation pursuant to KRS
4 Chapter 273 or as an unincorporated association pursuant to KRS Chapter 273A.
- 5 (3) A declaration may provide for a period of declarant control of the association,
6 during which period a declarant, or persons designated by the declarant, may
7 appoint and remove the officers and directors of the board and otherwise manage
8 and control the association. The declarant shall have no authority to remove a
9 director elected by the owners except during the period of declarant control. If
10 there is a period of declarant control provided for in the declaration, the
11 declarant shall specify the specific time and manner in which the declarant
12 control ends in the declaration. Regardless of the period provided in the
13 declaration, a period of declarant control terminates no later than the earlier of:
- 14 (a) Ninety (90) days after the conveyance of all of the created lots to owners
15 other than a declarant or subsequent declarant or four (4) years after all
16 declarants have ceased to offer lots for sale in the ordinary course of
17 business, whichever is earlier; or
- 18 (b) A date certain chosen by the declarant and defined in the declaration.
19 A declarant may voluntarily surrender the right to appoint and remove officers
20 and members of the board before termination of any period of developer control,
21 but in that event the declarant may require, for the duration of the period of
22 declarant control, that specified actions of the association or board, as described
23 in a recorded instrument executed by the declarant, be approved by the declarant
24 before they become effective.
- 25 (4) No later than the termination of any period of declarant control, the owners shall
26 elect a board of at least three (3) directors. The board shall elect the officers. The
27 board of directors and officers shall take office upon election.

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

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

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

13 (2) Upon reasonable notice, an owner shall permit agents or employees of the
14 association access through the owner's lot for the purpose of fulfilling the
15 association's duties and obligations. Any damage to the common areas, lot, or
16 dwelling unit due to that access is the responsibility of the owner that caused the
17 damage or the association if it is responsible for the damage. That owner, or the
18 association, is liable for the prompt repair of any damage and, if not repairable,
19 for the value of the damaged property or item as it existed immediately prior to
20 that damage.

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

23 (1) Unless otherwise provided in the declaration or bylaws, the association, through
24 its board, shall:

25 (a) Annually adopt and amend the budget for revenues and expenditures. The
26 budget may include reserves in an amount determined by the board to fund
27 the future repair and replacement of major capital items in the normal

1 course of operations; and

2 (b) Collect assessments for common expenses from owners in accordance with
3 Section 17 of this Act.

4 (2) Unless otherwise covered by a declarant, no later than the first conveyance of a
5 lot to a person other than a declarant, the association shall maintain the
6 following to the extent reasonably available and applicable:

7 (a) Property insurance on the common areas;

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

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

10 (3) The association shall keep:

11 (a) A complete set of financial records in accordance with Section 14 of this
12 Act;

13 (b) Records showing the collection of the payment for common expenses and
14 other charges received from the owners;

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

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

18 (e) Records of the names and mailing addresses of the owners. It shall be the
19 owner's sole responsibility to maintain with the secretary of the association
20 or his or her designee the owner's current mailing address and contact
21 information.

22 (4) An association, through its board, in addition to the rights stated in the
23 declaration and bylaws and otherwise allowed by law, may:

24 (a) Hire and fire management personnel, attorneys, accountants, and other
25 independent professionals and employees that the board determines are
26 necessary or desirable in the management of the property or the
27 association;

- 1 (b) Enter into contracts and incur liabilities relating to the operation of the
2 property;
- 3 (c) Enforce all provisions of the declaration, bylaws, covenants, conditions,
4 restrictions, and articles of incorporation governing the lots and common
5 areas;
- 6 (d) Adopt and enforce rules that regulate the maintenance, repair, replacement,
7 modification, and appearance of common areas, and any other rules
8 provided for in the declaration;
- 9 (e) Upon proper vote of the association, acquire, encumber, and convey or
10 otherwise transfer real and personal property;
- 11 (f) Hold in the name of the association the real property and the personal
12 property;
- 13 (g) Grant easements, leases, licenses, and concessions through or over the
14 common areas;
- 15 (h) Levy and collect fees or other charges for the use, rental, or operation of the
16 common areas or for services provided to owner;
- 17 (i) Pursuant to Section 18 of this Act, levy the following:
- 18 1. Interest and charges for the late payment of assessments;
19 2. Returned check charges;
20 3. Enforcement assessments and fines for violations of the declaration,
21 bylaws, or any rules and regulations of the association;
22 4. Charges for damage to common areas or other property; and
23 5. Reasonable charges related to the cost of preparing, recording, or
24 copying the declaration, bylaws, amendments to the declaration or
25 bylaws, resale certificates required under Section 16 of this Act, or
26 statement of unpaid assessments;
- 27 (j) Adopt and amend rules that regulate the collection of delinquent

- 1 assessments and the application of payments of delinquent assessments;
- 2 (k) Authorize entry to any common area of the planned community by agents
- 3 or employees of the association when conditions exist that involve an
- 4 imminent risk of damage or harm to common area;
- 5 (l) Upon proper vote of the association, and subject to subsection (1) of Section
- 6 25 of this Act, borrow money and assign the right to common assessments
- 7 or other future income to a lender as security for a loan to the association;
- 8 (m) Suspend the voting privileges and use of recreational facilities of an owner
- 9 that is delinquent in the payment of assessments for more than thirty (30)
- 10 days;
- 11 (n) Purchase directors and officers insurance and fidelity bonds the directors
- 12 consider appropriate and necessary;
- 13 (o) Invest excess funds in investments that meet standards for fiduciary
- 14 investments under applicable state law; and
- 15 (p) Exercise powers that are:
 - 16 1. Conferred by the declaration or bylaws;
 - 17 2. Necessary to incorporate the owner's association as a nonprofit
 - 18 corporation; or
 - 19 3. Permitted to be exercised by a nonprofit corporation in this state.

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

- 22 (1) Unless otherwise specified in the declaration, the owners may amend the
- 23 declaration by consent of the majority of the owners of all lots of the planned
- 24 community, either in writing or in a meeting called for that purpose. No
- 25 amendment to the declaration shall be effective until filed in the office of the
- 26 county recorded.
- 27 (2) A vote to terminate the applicability of the declaration and to dissolve the planned

1 community shall be in accordance with the terms of the declaration or subsection
2 (1) of this section.

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

5 After termination of any period of declarant control, and unless otherwise provided in
6 the declaration or bylaws:

7 (1) A meeting of the association shall be held at least once each year. Special
8 meetings of the association may be called after termination of the declarant
9 control period by the president, a majority of the board, or by written petition of
10 owners having at least twenty percent (20%) of the total votes or any lower
11 percentage specified in the declaration of bylaws. Upon receipt of a written
12 petition of the owners requesting a special meeting, the secretary shall convene
13 the special meeting within sixty (60) days of receipt of the written petition.

14 (2) Notice of meetings of the association shall be given to owners no less than ten
15 (10) days nor more than sixty (60) days in advance of any meeting. The secretary
16 or other officer specified in the bylaws shall cause notice to be hand-delivered,
17 electronically delivered, or sent prepaid by United States mail to the mailing
18 address of record for each owner. The notice of any meeting shall state the time
19 and place of the meeting and the items on the agenda, including election of
20 directors, the general nature of any proposed amendment to the declaration, any
21 budget changes, any other business to be put to a vote of the membership, and
22 any proposal to remove a director.

23 (3) A quorum is deemed present throughout any meeting of the association if
24 persons entitled to cast ten percent (10%) of the total lots which may be cast are
25 present in person, by absentee ballot, or by proxy at the beginning of the meeting.

26 (4) (a) If only one (1) of the multiple owners of a lot is present at a meeting of the
27 association, he or she is entitled to cast all votes allocated to the lot. If more

1 than one (1) of the multiple owners is present, the votes allocated to that lot
2 may be cast only in accordance with the agreement of a majority in interest
3 of the multiple owners, unless the declaration expressly provides otherwise.
4 There is majority agreement if any one (1) of the multiple owners casts the
5 votes allocated to that lot without protest being made promptly to the person
6 presiding over the meeting by any of the other owners of the lot.

7 (b) Votes allocated to a lot may be cast in person, by absentee ballot, or
8 pursuant to proxy duly executed by a lot owner. If a lot is owned by more
9 than one (1) person, each owner of the lot may vote or register protest to the
10 casting of votes by the other owner of the lot through a duly executed proxy.
11 A lot owner may not revoke a proxy given pursuant to this section, except by
12 actual notice of revocation to the person presiding over a meeting of the
13 association. A proxy is void if it is not dated or purports to be revocable
14 without notice. A proxy terminates one (1) year after its date, unless it
15 specifies a shorter term.

16 (c) Each lot shall have one (1) vote and cumulative voting shall not be allowed.
17 The declaration or bylaws may provide for the option of electronic voting or
18 voting by mail.

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

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

25 (1) Except as provided in the declaration, the bylaws, or subsection (2) of this
26 section, the board may act in all instances on behalf of the association. In the
27 performance of their duties, the officers and members of the board shall act in

1 accordance with Section 13 of this Act.

2 (2) The board shall not act on behalf of the association to amend the declaration, to
3 terminate the planned community, or to elect members of the board or determine
4 the qualifications, powers, and duties, or terms of office of the directors, but the
5 board may select individuals to fill vacancies for the unexpired portion of any
6 board term. This section shall not limit the power or authority of the declarant as
7 set forth in the declaration.

8 (3) After the termination of the declarant control period, unless the bylaws specify a
9 larger percentage, a quorum is deemed present throughout any meeting of the
10 board if persons entitled to cast fifty percent (50%) of the votes on the board are
11 present at the beginning of the meeting.

12 (4) After the termination of the declarant control period, the board shall adopt an
13 annual budget for the planned community. The board shall:

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

16 (b) 1. If the adopted budget contains an increase of greater than fifteen
17 percent (15%) from the previous year's budget, set a date for a meeting
18 of the association to consider ratification of the budget.

19 2. The meeting shall be held within forty-five (45) days after the
20 summary has been provided.

21 3. The budget shall be deemed ratified, whether or not a quorum is
22 present, unless at that meeting a majority of all owners, or any larger
23 vote specified in the declaration, reject the budget.

24 4. If the budget is rejected, the existing budget shall be continued until
25 such time as a subsequent budget is adopted by the board in
26 conformity with this subsection; and

27 (c) Provide notice to the members of the meeting pursuant to the declaration.

1 *The provisions of this subsection shall override any limitation on the amount of*
2 *assessments or the amount of annual increases that may be contained in existing*
3 *declarations, bylaws, rules, or regulations of any planned community.*

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

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

9 *(2) A board may act in all instances on behalf of an association unless otherwise*
10 *provided in the declaration, bylaws, or Sections 1 to 28 of this Act. The board may*
11 *appoint persons to fill vacancies in its membership for the unexpired portion of*
12 *any term.*

13 *(3) Unless the articles of incorporation or bylaws provide otherwise, the board of*
14 *directors may permit any or all directors to participate in a regular or special*
15 *meeting by, or conduct the meeting through the use of, any means of*
16 *communication by which all directors participating may simultaneously*
17 *communicate with each other during this meeting. A director participating in a*
18 *meeting by this means shall be deemed to be present in person at the meeting.*

19 *(4) After the termination of the declarant control period, meetings of the board must*
20 *be open to the members except during executive sessions. The board may, at its*
21 *discretion, designate a portion of the meeting agenda for member comment and*
22 *shall have the right to establish time limits for such member comment. Outside of*
23 *a set time for member comment, members shall not interrupt or comment during*
24 *the remainder of the meeting, unless acknowledged by the board.*

25 *(5) In lieu of conducting a meeting, the board may take action with the unanimous*
26 *written consent of the members of the board. Any written consent shall be ratified*
27 *at the next meeting of the board and the written consent filed with the minutes of*

1 the meetings of the board.

2 (6) The board may hold an executive session only during a meeting of the board. No
3 final vote or action may be taken during an executive session. An executive
4 session may be held only to:

5 (a) Consult with the association's attorney concerning legal matters;

6 (b) Discuss existing or potential litigation or mediation, arbitration, or
7 administrative proceedings;

8 (c) Discuss labor or personnel matters;

9 (d) Discuss contracts, leases, and other commercial transactions to purchase or
10 provide goods or services currently being negotiated, including the review of
11 bids or proposals, if premature general knowledge of those matters would
12 place the association at a disadvantage;

13 (e) Prevent public knowledge of the matter to be discussed if the board or
14 committee determines that public knowledge would violate the privacy of
15 any person or member; or

16 (f) Discuss any and all other matters which may be legally privileged or
17 confidential under the law.

18 (7) Use of proxies by directors for purposes of determining quorums or to cast votes
19 is prohibited.

20 (8) For purposes of this section, a gathering of board members at which the board
21 members do not conduct association business is not a meeting of the board. The
22 board and its members may not use incidental or social gatherings of board
23 members or any other method to evade the open meeting requirements of this
24 section.

25 (9) The board of an association shall comply with all applicable state and federal
26 laws concerning prohibitions against discrimination on the basis of race, color,
27 religion, sex, military status, national origin, disability, age, or ancestry. No

1 private right of action in addition to those conferred by the applicable state or
2 federal laws is conferred on any aggrieved person by this subsection.

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

5 (1) A board member of an incorporated association shall discharge his or her duties
6 as an officer or member of the board or as a member of a committee in
7 accordance with the standards set forth in KRS Chapter 273.

8 (2) A board member of an unincorporated association shall discharge his or her
9 duties as an officer or member of the board or as a member of a committee in
10 accordance with the standards set forth in this section.

11 (3) A board member shall discharge his or her duties as an officer or member of the
12 board or as a member of a committee:

13 (a) In good faith;

14 (b) On an informed basis; and

15 (c) In a manner he or she believes to be in the best interest of the planned
16 community.

17 (4) A board member shall be considered to discharge his or her duties on an
18 informed basis if he or she makes, with the care an ordinarily prudent person in
19 a like position would exercise under similar circumstances, inquiry into the
20 business and affairs of the association, or into a particular action to be taken or
21 decision to be made.

22 (5) In discharging his or her duties, a board member shall be entitled to rely on
23 information, opinions, reports, or statements, including financial statements and
24 other financial data, if prepared or presented by:

25 (a) One (1) or more officers or employees of the association whom the board
26 member believes to be reliable and competent in the matters presented;

27 (b) Legal counsel, public accountants, or other persons as to matters the

1 director believes are within the person's professional or expert competence;

2 or

3 (c) A committee of the board of which he or she is not a member if the board
4 member believes the committee merits confidence.

5 (6) A board member shall not be considered to act in good faith if he or she has
6 knowledge concerning the matter in question that makes reliance otherwise
7 permitted by subsection (5) of this section unwarranted.

8 (7) In addition to any other limitation on such board member's liability for monetary
9 damages contained in any provision of the articles of incorporation of an
10 association adopted in accordance with state law, any action taken as a board
11 member, or any failure to take action as a board member, shall not be the basis
12 for monetary damages or injunctive relief unless:

13 (a) The board member has breached or failed to perform the duties of the board
14 member's office in compliance with this section; and

15 (b) In the case of an action for monetary damages, the breach or failure to
16 perform constitutes either willful misconduct or wanton or reckless
17 disregard for human rights, safety, or property.

18 (8) A person bringing an action for monetary damages under this section shall have
19 the burden of proving by clear and convincing evidence the provisions of
20 subsection (7) of this section, and the burden of proving that the breach or failure
21 to perform was the legal cause of the damages suffered.

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

24 (1) A planned community association, other than a multi-unit planned community
25 association, shall keep financial records sufficiently detailed to enable the
26 association to prepare financial statements in accordance with generally accepted
27 accounting principles.

1 (2) No later than one hundred eighty (180) days after the end of the fiscal year, or
2 annually on a date provided in the declaration or bylaws, the association shall
3 cause to be prepared a financial report for the preceding fiscal year. No later
4 than thirty (30) days after the financial report is prepared and received by the
5 board, the association shall make it available for examination by any lot owner
6 and, upon request and payment of a reasonable fee, shall provide a lot owner
7 with a copy of the financial report.

8 (3) (a) An association with total annual revenues of less than one hundred
9 thousand dollars (\$100,000) shall have prepared a financial statement of
10 cash receipts and disbursements that disclose all sources of income and
11 expenses by account and classification.

12 (b) An association with total annual revenues of at least one hundred thousand
13 dollars (\$100,000) but less than two hundred fifty thousand dollars
14 (\$250,000) shall have prepared a financial report under the standards of a
15 compilation by a certified public accountant.

16 (c) An association with total annual revenues of at least two hundred fifty
17 thousand dollars (\$250,000) but less than one million dollars (\$1,000,000)
18 shall have prepared a financial report under the standards of review by a
19 certified public accountant.

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

23 (e) The board of an association, in its sole discretion, may elect to have the
24 financial report required under this subsection prepared in accordance with
25 a higher standard than required for the association's annual revenue level.

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

1 (1) Unless otherwise prohibited by this section, any owner may examine and copy the
2 books, records, and minutes of the association described in subsection (3) of
3 Section 8 of this Act, pursuant to reasonable standards set forth in the
4 declaration, bylaws, or rules and regulations promulgated by the board, including
5 standards governing the type of documents subject to examination and copying,
6 the time and location at which documents may be examined or copied, and the
7 specification of a reasonable fee for copying the documents.

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

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

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

14 (c) Information that pertains to contracts or transactions currently under
15 negotiation, or information that is contained in a contract or other
16 agreement containing confidentiality requirements and that is subject to
17 those requirements;

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

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

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

24 (1) A seller of a dwelling lot or lot in a planned community, other than a dwelling
25 unit or lot in multi-unit planned communities, shall furnish to a purchaser or
26 purchaser's agent prior to execution of any contract for sale of a lot, or otherwise
27 before conveyance, a planned community association disclosure form that

1 includes:

2 (a) A statement indicating the recorded name of the planned community's
3 name as stated in the declaration;

4 (b) A statement setting forth the amount and frequency of the common expense
5 assessment for the lot;

6 (c) A statement of any other fees payable by the owner;

7 (d) The name, mailing address, and phone number of the person who can
8 provide to the buyer, at the buyer's expense, copies of the declaration,
9 bylaws, rules and regulations, and the latest financial statements;

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

13 (f) In the event there is not a declarant or executive board actively carrying out
14 the duties of the association and the association has an inactive standing
15 with the Secretary of State's office or local county clerk's office, a statement
16 that the association is inactive.

17 (2) In lieu of providing a separate planned community disclosure form as required in
18 subsection (1) of this section, the information required in subsection (1) of this
19 section may be incorporated into the form for seller's disclosure of conditions
20 required in KRS 324.360.

21 (3) The association and sellers of units in multi-unit planned communities shall
22 comply with the provisions in KRS 381.9197 and 381.9203 of the Kentucky
23 Condominium Act.

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

26 (1) (a) Unless otherwise provided by the declaration, all costs incurred by the
27 association in the administration, governance, and maintenance of a

1 planned community are common expenses. Unless otherwise provided in
2 the declaration, all in the administration, operation, maintenance, repair,
3 and replacement of the common areas, are common expenses.

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

8 (c) The board shall assess the common expense liability for each lot at least
9 annually, based on a budget the board adopts at least annually in
10 accordance with Section 11 of this Act. After termination of the declarant
11 control period, the board shall abide by subsection (3) of Section 11 of this
12 Act for any increase of any assessment for common expense.

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

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

18 Unless otherwise provided in the declaration, bylaws, rules, or regulations of the
19 association:

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

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

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

- 1 (c) Costs associated with the enforcement of the declarations, bylaws, or rules
2 and regulations of the association, including but not limited to reasonable
3 attorney's fees, costs, and other expense; and
- 4 (d) Costs or charges the declaration, bylaws, or rules and regulations permit.
- 5 (2) The association shall credit any amount it receives from a lot owner pursuant to
6 this section in the following order:
- 7 (a) To the oldest principal amounts the owner owes to the association for the
8 common expenses chargeable against the lot;
- 9 (b) To interest or late fees owed to the association;
- 10 (c) To fines or enforcement assessments owed to the association; and
- 11 (d) To collection costs and reasonable attorney's fees incurred by the
12 association in collecting the assessment.
- 13 (3) Prior to imposing a charge for fines, damages, or an enforcement assessment
14 pursuant to this section, the board shall give the owner a written notice that
15 includes:
- 16 (a) A description of the property damage or violation;
- 17 (b) The amount of the proposed charge or assessment;
- 18 (c) A statement that the owner has a right to a hearing before the board to
19 contest the proposed charge, fine, or assessment;
- 20 (d) A statement setting forth the procedures to request a hearing; and
- 21 (e) A reasonable date by which the owner must cure a continuing violation to
22 avoid the proposed charge, fine, or assessment, if such opportunity to cure
23 is applicable.
- 24 (4) (a) To request a hearing, the owner shall deliver a written notice to the board
25 no later than the tenth day after receiving the notice required under this
26 section. If the owner fails to make a timely request for a hearing, the right
27 to the hearing is waived and the board may immediately impose a charge

1 for fines, damages, or an enforcement assessment pursuant to this section.

2 (b) If an owner requests a hearing, the board shall provide the owner with a
 3 written notice at least seven (7) days prior to the hearing that includes the
 4 date, time, and location of the hearing.

5 (c) The board shall not levy a charge or assessment before holding any hearing
 6 requested pursuant to this section.

7 (d) Within thirty (30) days following a requested hearing at which the board
 8 imposes a charge or assessment, the association shall deliver a written
 9 notice of the charge or assessment to the owner.

10 (e) Any written notice required under this section shall be delivered to the
 11 owner or occupant of the dwelling unit by personal delivery, by certified
 12 mail return receipt requested, or by regular mail at the address registered
 13 with the association.

14 (f) Multiple hearings are not required with respect to multiple charges for
 15 fines, damages, or an enforcement assessment pursuant to this section that
 16 all relate to the same violation or violations which are noticed at the same
 17 time.

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

20 (1) (a) In addition to all other assessments which are authorized in the declaration,
 21 the board of an association shall have the power to levy a special assessment
 22 against its lot owners if the board finds that the purpose of the assessment is
 23 in the best interests of the association and the proceeds of the assessment
 24 are used primarily for the maintenance and upkeep of the common area
 25 and other such areas of association responsibility expressly provided for in
 26 the declaration, including capital expenditures.

27 (b) After termination of the declarant control period, an affirmative vote of

1 sixty percent (60%) of the full board shall be required to approve a special
2 assessment.

3 (c) Within thirty (30) days after board passage of a special assessment, a
4 meeting of the association shall be held to allow lot owners an opportunity
5 to rescind or reduce the special assessment. A majority of the total number
6 of lots of the planned community cast in person, by absentee ballot, or by
7 proxy shall be required to rescind or reduce the special assessment.

8 (2) No director or officer of the association shall be liable for failure to perform his
9 or her fiduciary duty if a special assessment for the funds necessary for the
10 director or officer to perform his or her fiduciary duty is rescinded or reduced by
11 the owners pursuant to this section and the association shall indemnify such
12 director or officer against any damage resulting from a claimed breach of
13 fiduciary duty arising therefrom.

14 (3) The failure of a lot owner to pay the special assessment allowed under subsection
15 (1) of this section will provide the association with the right to deny the lot owner
16 access to any or all of the common areas, except that access to any road within
17 the planned community that is a common area and provides direct access to the
18 lot owner's lot shall not be denied.

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

21 The association and all owners, residents, tenants, and other persons lawfully in
22 possession and control of any part of an ownership interest shall comply with any
23 covenant, condition, and restriction set forth in any recorded document to which they
24 are subject and with the bylaws, rules, and regulations of the association, as lawfully
25 amended. Any violation is grounds for the association or any owner to commence a
26 civil action for damages, injunctive relief, or both, and an award of costs and
27 reasonable attorney's fees in both types of actions.

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

3 (1) The association shall have a lien upon the real estate or interest in any lot for the
4 non-payment of any assessment or charge levied in accordance with Sections 17,
5 18, and 19 of this Act, as well as any related interest, fines, administrative late
6 fees, enforcement assessments, collection costs, and reasonable attorney's fees
7 that are chargeable against the lot and that remain unpaid thirty (30) days after
8 any portion has become due and payable.

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

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

15 (b) Valid unless it is sooner released or satisfied in the same manner provided
16 by law for the release and satisfaction of mortgages on real property or
17 unless it is discharged by the final judgment or order of a court in an action
18 brought to discharge the lien as provided in this section;

19 (c) Prior to any other lien, except:

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

23 2. Liens and encumbrances recorded before the recordation; and

24 3. A mortgage on the property; and

25 (d) Permitted to be foreclosed in the same manner as a mortgage on real
26 property in an action brought by the association.

27 (3) An owner may commence an action for the discharge of the lien in the county in

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

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

9 Unless otherwise provided in the declaration, any surplus funds of the association
 10 remaining after payment of or provision for common expenses and any prepayment of
 11 reserves may be paid to each lot owner in proportion to his or her common expense
 12 liabilities or credited to him or her to reduce his or her future common expense
 13 assessments.

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

16 (1) In order to preserve a residential community and the associated infrastructure
 17 and common areas for the purpose described in this section, the parcel owners in
 18 a community that was previously subject to a declaration of covenants that has
 19 ceased to govern one (1) or more parcels in the community may revive the
 20 declaration and the homeowners' association for the community upon approval
 21 by the parcel owners to be governed.

22 (2) (a) All parcels to be governed by a revived declaration must have been once
 23 governed by a previous declaration that has ceased to govern some or all of
 24 the parcels in the community.

25 (b) The revived declaration may not contain covenants that are more restrictive
 26 on the parcel owners than the covenants contained in the previous
 27 declaration, except that the revived declaration may:

- 1 1. Have an effective term of longer duration than the term of the
- 2 previous declaration;
- 3 2. Omit restrictions contained in the previous declaration;
- 4 3. Govern fewer than all of the parcels governed by the previous
- 5 declaration;
- 6 4. Provide for amendments to the declaration and other governing
- 7 documents; and
- 8 5. Contain provisions required by Sections 1 to 28 of this Act for new
- 9 declarations that were not contained in the previous declaration.
- 10 (3) (a) The proposal to revive a declaration of covenants and a homeowners'
- 11 association for a community under the terms of this section shall be
- 12 initiated by an organizing committee consisting of not less than three (3)
- 13 parcel owners located in the community that is proposed to be governed by
- 14 the revived declaration. The name, address, and telephone number of each
- 15 member of the organizing committee must be included in any notice or
- 16 other document provided by the committee to parcel owners to be affected
- 17 by the proposed revived declaration.
- 18 (b) The organizing committee shall prepare or cause to be prepared the
- 19 complete text of the proposed revised declaration of covenants to be
- 20 submitted to the parcel owners for approval. The proposed revived
- 21 documents must identify each parcel that is to be subject to the governing
- 22 documents by its legal description and by the name of the parcel owner or
- 23 the person in whose name the parcel is assessed on the last completed tax
- 24 assessment roll of the county at the time when the proposed revived
- 25 declaration is submitted for approval by the parcel owners.
- 26 (c) The organizing committee shall prepare the full text of the proposed articles
- 27 of incorporation and bylaws of the revived homeowners' association to be

1 submitted to the parcel owners for approval, unless the association is then
2 an existing corporation, in which case the organizing committee shall
3 prepare the existing articles of incorporation and bylaws to be submitted to
4 the parcel owners.

5 (d) The proposed revived declaration and other governing documents for the
6 community shall:

7 1. Provide that the voting interest of each parcel owner shall be the same
8 as the voting interest of the parcel owner under the previous governing
9 documents;

10 2. Provide that the proportional-assessment obligations of each parcel
11 owner shall be the same as proportional-assessment obligations of the
12 parcel owner under the previous governing documents;

13 3. Contain the same respective amendment provisions as the previous
14 governing documents or, if there were no amendment provisions in
15 the previous governing document, amendment provisions that require
16 approval of not less than two-thirds (2/3) of the affected parcel
17 owners;

18 4. Contain no covenants that are more restrictive on the affected parcel
19 owners than the covenants contained in the previous governing
20 documents; and

21 5. Comply with the other requirements for a declaration of covenants
22 and other governing documents as specified in this paragraph.

23 (e) A copy of the complete text of the proposed revised declaration of covenants,
24 the proposed new or existing articles of incorporation and bylaws of the
25 homeowners' association, and a graphic depiction of the property to be
26 governed by the revived declaration shall be presented to all of the affected
27 parcel owners by mail or hand delivery not less than fourteen (14) days

1 before the time that the consent of the affected parcel owners to the
2 proposed governing documents is sought by the organizing committee.

3 (f) At least ten percent (10%) of the affected parcel owners must agree in
4 writing to the revived declaration of covenants and governing documents of
5 the homeowners' association or approve the revived declaration and
6 governing documents by a vote at a meeting of the affected parcel owners.
7 Proof of notice of the meeting to all affected owners and the minutes of the
8 meeting recording the votes of the property owners shall be certified by a
9 court reporter or an attorney licensed to practice in the Commonwealth.

10 (4) (a) No later than sixty (60) days after the proposed declaration has met the
11 requirements of subsection (3) of this section, the organizing committee
12 shall file the articles of incorporation of the association with the Secretary
13 of State if the articles have not been previously filed.

14 (b) No later than sixty (60) days after the proposed declaration has met the
15 requirements of subsection (3) of this section, the president and secretary of
16 the association shall execute the revived declaration and other governing
17 documents in the name of the association and have the documents recorded
18 with the county clerk of the county or counties where the affected parcels
19 are located.

20 (c) The recorded documents shall include the full text of the approved
21 declaration of covenants, the articles of incorporation and bylaws of the
22 homeowners' association, and the legal description of each affected parcel
23 of property.

24 (d) Immediately after recording the documents, a complete copy of all of the
25 approved recorded documents must be mailed or hand-delivered to the
26 owner of each affected parcel. The revived declaration and other governing
27 documents shall be effective upon recordation in the public records with

1 respect to each affected parcel, regardless of whether the particular parcel
2 owner approved the revived declaration. Upon recordation, the revived
3 declaration shall replace and supersede the previous declaration with
4 respect to all affected parcels then governed by the previous declaration and
5 shall have the same record priority as the superseded previous declaration.
6 With respect to any affected parcels that had ceased to be governed by the
7 previous declaration as of the recording date, the revived declaration may
8 not have retroactive effect to the parcel and shall take priority to the parcel
9 as of the recording date.

10 (e) With respect to any parcel that has ceased to be governed by a previous
11 declaration of covenants as of the effective date of this Act, the parcel owner
12 may commence an action within one (1) year after the effective date of this
13 Act for a judicial determination that the previous declaration did not govern
14 that parcel as of the effective date of this Act and that any revival of such
15 declaration as to that parcel would unconstitutionally deprive the parcel
16 owner of rights or property. A revived declaration that is implemented
17 pursuant to this section shall not apply to or affect the rights of the
18 respective parcel owner recognized by any court order or judgment in any
19 such action commenced within one (1) year after the effective date of this
20 Act, and any such rights so recognized may not be subsequently altered by a
21 revived declaration implemented under this section without the consent of
22 the affected property owner.

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

25 (1) In the event a planned community, whether active or inactive, fails to maintain
26 any infrastructure, common area, watershed, storm water detention or retention
27 area, or other facilities that it is legally obligated to maintain under the

1 declaration, approved development plat, or other document of record of the
2 planned community, any municipal authority with jurisdiction of the planned
3 community may petition any Circuit Court within whose jurisdiction the planned
4 community lies for the appointment of a receiver to manage the affairs of the
5 association. Any municipality seeking the appointment of a receiver shall be
6 entitled to reimbursement of all costs, fees, and reasonable attorney's fees.

7 (2) The receiver shall have all the authority granted to the board of directors under
8 the declaration including the ability to establish, levy, and collect fees and to
9 contract for the ongoing renovation, maintenance, and upkeep of the legally
10 obligated infrastructure, common area, watershed, storm water detention or
11 retention areas or other facilities. The receiver shall be entitled to recover
12 reasonable costs and fees for services as approved by the court.

13 (3) In the event any municipality within whose jurisdiction the association lies is
14 required to expend funds to repair, renovate, maintain, or correct code violations,
15 the municipality may seek reimbursement for those costs from the receiver.

16 (4) In the event the association is no longer active, the receiver shall have the
17 obligation and authority to begin the process of revitalization of the association in
18 accordance with Section 23 of this Act by acting as the organizing committee.

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

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

27 (2) The board, on behalf of the association, has all powers necessary and appropriate

1 to affect a conveyance or encumbrance that subsection (1) of this section permits,
2 including the power to execute a deed or other instrument.

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

5 (1) When any portion of the common area is taken or damaged under the power of
6 eminent domain, any award or payment therefor shall be paid to the association,
7 which shall be a party in interest in the condemnation proceeding. Except to the
8 extent the declaration or any duly adopted rules and regulations otherwise
9 provide, the board shall have the authority to negotiate with the condemning
10 authority, agree to an award or payment amount with the condemning authority
11 without instituting condemnation proceedings, and upon such agreement, convey
12 the subject common area to the condemning authority. Thereafter, the board may
13 execute and record the deed of conveyance to the condemning authority.

14 (2) A member of the association, by virtue of his or her membership, shall be
15 estopped from contesting the action of the association in any proceeding held
16 pursuant to this section.

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

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

26 ➔SECTION 28. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
27 READ AS FOLLOWS:

1 Sections 1 to 28 of this Act shall be construed to establish a uniform framework for the
2 operation and management of planned communities in this state and to supplement
3 any planned community governing document that is in existence on the effective date
4 of this Act. In the event of a specific conflict between Sections 1 to 28 of this Act and
5 express requirements or restrictions in such a governing document, the governing
6 document shall control. Sections 1 to 28 of this Act shall control if any governing
7 document is silent with respect to any provision of Sections 1 to 28 of this Act.

8 ➔SECTION 29. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) As used in this section:

11 (a) "Governing documents" means the articles of incorporation, bylaws, plat,
12 declaration of covenants, conditions, and restrictions, rules and regulations
13 of a homeowners' association, or other written instrument by which the
14 association has the authority to exercise any of the powers provided for in
15 this section or to manage, maintain, or otherwise affect the property under
16 its jurisdiction.

17 (b) "Homeowners' association" or "association" means a corporation,
18 unincorporated association, or other legal entity, each member of which is
19 an owner of residential real property located within the association's
20 jurisdiction, as described in the governing documents, and by virtue of
21 membership or ownership of property is obligated to pay real property taxes,
22 insurance premiums, maintenance costs, or for improvement of real
23 property other than that which is owned by the member.

24 (2) The governing documents of a homeowners' association shall not prohibit the
25 outdoor display of political yard signs by an owner or resident on the owner's or
26 resident's property thirty (30) days before any special, primary, or regular
27 election until seven (7) days after that election. The governing documents may

1 *include reasonable rules and regulations regarding the placement, size, and*
2 *manner of display of political yard signs.*

3 ➔Section 30. Sections 1 to 28 of this Act may be cited as the Kentucky Planned
4 Community Act.