

SENATE BILL 405

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 66,
relative to enacting the "Tennessee Homeowners
Association Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 27, is amended by adding the following new part:

66-27-601. This part shall be known and may be cited as the "Tennessee Homeowners Association Act."

66-27-602. As used in this part:

(1) "Areas of common responsibility" means property not owned by the association but for which the association is responsible as provided on a plat or in a declaration;

(2) "Assessment" means the sum attributable to each unit and due to the association pursuant to the budget adopted under § 66-27-619;

(3) "Association" means an organization comprised of all the unit owners that is structured pursuant to and has the powers and duties set out in § 66-27-608;

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

(5) "Common areas" means property owned by the association for the use of all unit owners;

(6) "Common expense liability" means the liability for common expenses allocated to each unit;

(7) “Common expenses” means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves;

(8) “Common interest community”:

(A) Means real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, improvement of, or services or other expenses related to, common areas, areas of common responsibility, other units, or other real estate described in the declaration;

(B) Does not include an arrangement described in § 66-27-607; and

(C) Includes a horizontal property regime or planned unit development formed under § 66-27-103(b);

(9) “Declarant” means a person or group of persons acting in concert that:

(A) As part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or

(B) Reserves or succeeds to any declarant right;

(10) “Declarant right” means any right reserved in the declaration for the benefit of a declarant, as opposed to unit owners generally;

(11) “Declaration” means the instrument, however denominated, that creates a common interest community, including any amendments to that instrument;

(12) “Executive board” means the body, regardless of name, designated in the declaration or bylaws that has power to act on behalf of the association;

(13) “Limited common element” means a portion of the common areas allocated for the exclusive use of one (1) or more, but fewer than all, of the units;

(14) “Person” means:

(A) An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation,

government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity; and

(B) In the case of a land trust, means the beneficiary of the trust rather than the trust or the trustee;

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

(16) "Residential purposes" means use for dwelling purposes, and any associated amenities;

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

(18) "Unit":

(A) Means a physical portion of the common interest community designated for separate ownership or occupancy, and all improvements to the physical portion; and

(B) Includes an unimproved lot if the unimproved lot meets the requirements of subdivision (18)(A); and

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

66-27-603. Except as expressly provided in this part, the effect of this part shall not be varied by agreement, and rights conferred by this part shall not be waived.

66-27-604. Every contract or duty governed by this part imposes an obligation of good faith in the performance or enforcement of the contract or duty.

66-27-605. Except as otherwise provided in this part, this part applies to all common interest communities that may be used for residential purposes.

66-27-606.

(a) Sections 66-27-612(a), 66-27-620(a) and (c), 66-27-622(d), and 66-27-625 apply to all common interest communities. All other provisions of this part apply to all common interest communities, but only with respect to events and circumstances occurring after July 1, 2015; provided, that the application of this section to the events and circumstances does not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common interest communities.

(b) The declaration, bylaws, or plats and plans of any common interest community created before July 1, 2015, may be amended to achieve any result permitted by this part, regardless of what applicable law provided prior to July 1, 2015.

66-27-607.

(a) An arrangement between the associations for two (2) or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in the arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in the arrangement does not create a separate common interest community; provided, necessary assessments against the units in the common interest community required by the arrangement are included in the periodic budget for the common interest community.

(c) A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with the use of a party wall,

driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

(d) This part does not apply to condominiums governed by the Tennessee Condominium Act of 2008, compiled in parts 2, 3, 4, and 5 of this chapter;

(e) This part does not apply to timeshare arrangements governed by the Tennessee Time-Share Act of 1981, compiled in chapter 32, part 1 of this title.

66-27-608.

(a) An association shall be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times shall consist exclusively of all unit owners. The association shall be organized as a profit or nonprofit corporation or limited liability company, or in the case of a common interest community with four (4) or fewer units, the association may be organized as an unincorporated association.

(b) Except as provided in subsection (c), and subject to the declaration and this part, including any provisions of this part authorizing the members of the association to rescind certain actions of the executive board by appropriate vote, the association, even if unincorporated, or if incorporated or a limited liability company even if subsequently dissolved administratively, may, by vote of its members or, if permitted or required by vote of the association or by the declaration or bylaws or specifically permitted or required, by action of the executive board, exercise the following powers and duties:

(1) Adopt and amend bylaws;

(2) Hire and discharge managing agents and other employees, agents, and independent contractors;

(3) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more unit owners on matters affecting the common interest community;

(4) Make contracts and incur liabilities;

(5) Regulate the use, maintenance, repair, replacement, and modification of common areas;

(6) Cause additional improvements to be made as a part of the common areas;

(7) Acquire, hold, encumber, and convey in the association's name any right, title, or interest to real or personal property;

(8) Grant easements, leases, licenses, and concessions through or over the common areas;

(9) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common areas other than limited common areas serving a single unit and for services provided to unit owners;

(10) Subject to § 66-27-620(a), impose fees, impose charges for late payment of assessments, and levy fines for violations of the declaration, bylaws, and rules of the association;

(11) Impose reasonable charges for the preparation and recordation of amendments to the declaration or the provision of information required by § 66-27-625;

(12) Impose reasonable charges for services rendered in connection with the transfer of a unit;

(13) Provide for the indemnification of its officers and members of its board of directors and maintain directors' and officers' liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments; provided, assignments of income to finance common expenses of the association may be made only to the extent the declaration expressly allows;

(15) Exercise any other powers conferred by the declaration or bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

(c) The declaration shall not impose limitations on the power of the association to deal with the declarant, its agents, or contractors that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(d) Except as may be otherwise provided by the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51–68, the Tennessee Business Corporation Act, compiled in title 48, chapters 11–27, or the Tennessee Revised Limited Liability Company Act, compiled in title 48, chapter 249, and except for the power set out in subdivision (b)(1), any of the powers set out in subdivisions (b)(2)–(17) may be delegated by the bylaws to the executive board.

66-27-609.

(a) Except as otherwise provided in § 66-27-618, an association shall have an executive board created in accordance with its declaration or bylaws. Except as otherwise provided in the declaration, the bylaws, subsection (c), or other provisions of this part, the executive board acts on behalf of the association.

(b) The executive board shall have the following powers:

(1) Subject to the right of the unit owners to repeal any rule pursuant to § 66-27-616, to adopt and amend rules governing the affairs of the association, including, but not limited to, the right to regulate the parking of motor and other vehicles within the common interest community and on the public and private roads that may be located in or are adjacent to the common interest community;

(2) To adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(3)

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

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

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

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

(iv) It is not in the association's best interests to pursue an enforcement action; and

(B) The executive board's decision under subdivision (b)(3)(A) not to pursue enforcement under one (1) set of circumstances does not

prevent the executive board from taking enforcement action under another set of circumstances; provided, the executive board shall not be arbitrary or capricious in taking enforcement action; and

(4)

(A) Except as provided in the declaration, the bylaws, subsection (c), or other provisions of this part, to act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise:

(i) If appointed by the declarant, the care required of fiduciaries of the unit owners; and

(ii) If elected by the unit owners, ordinary and reasonable care; and

(B) The standards of care and loyalty described in subdivision (b)(4)(A) apply regardless of the form in which the association is organized.

(c) The executive board shall not:

(1) Amend the declaration, except as provided in the declaration or the bylaws;

(2) Amend the bylaws, except as provided in the declaration or the bylaws;

(3) Terminate the common interest community;

(4) Elect members of the executive board; provided, that the executive board may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members; or

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

66-27-610.

(a) The bylaws of the association shall provide for:

(1) The number of members of the executive board and the titles of the officers of the association;

(2) Election by the executive board of a president, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing members of the executive board and officers and filling vacancies;

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) The method of amending the bylaws.

(b) Subject to the declaration and this part, the bylaws may provide for any other necessary or appropriate matters, including matters that could be adopted as rules.

(c) The bylaws for any association and any amendments to the bylaws may be, and the bylaws of any association formed after July 1, 2015, and any amendments to the bylaws shall be, recorded in the county or counties where the property or any part of the property lies. The bylaws shall be deemed to be in recordable form if signed by any officer of the association and the signature is notarized.

66-27-611.

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

(b)

(1) An association shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association, if any of the following persons request that the secretary call the meeting:

(A) The association president;

(B) A majority of the executive board; or

(C) Unit owners having at least twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association.

(2) If the association does not notify unit owners of a special meeting within thirty (30) days after the requisite number or percentage request the secretary to call a meeting, the requesting members may directly notify all the unit owners of the meeting.

(3) Only matters described in the meeting notice required by subsection (c) may be considered at a special meeting.

(c) Notice may be made to the last address furnished in writing to the association or by any other method reasonably calculated to provide notice to the person, including electronic mail. The notice for any meeting shall state the time, date, and place of the meeting and, in the case of a special meeting, the items on the agenda. An association shall notify unit owners of the time, date, and place of each annual and special unit owners' meeting not less than ten (10) days or more than sixty (60) days before the meeting date.

(d) If any of the following items are to be considered at an annual meeting, the notice for the meeting shall state that the item is on the agenda:

(1) A proposed amendment to the declaration or bylaws. If a proposed amendment to the declaration or the bylaws is on the agenda, the notice shall include a statement of the general nature of the proposed amendment;

(2) Any budget changes requiring the approval of the unit or lot owners;
and

(3) Any proposal to remove a member of the executive board.

(e) The minimum time to give notice required by subsection (c) may be reduced or waived for a meeting called to deal with an emergency.

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

(g) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with § 66-27-612(e).

(h) Except as otherwise provided in the bylaws, meetings of the association shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

66-27-612.

(a) Meetings of the executive board and committees of the association authorized to act for the association shall be open to the unit owners except during executive sessions. The executive board and committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

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

(2) Discuss existing or potential litigation, mediation, arbitration, or administrative proceedings;

(3) Discuss labor or personnel matters;

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

(5) Prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

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

(c) During a period of declarant control, the executive board shall meet at least one (1) time a year, at a place convenient to the members of the community. The meeting may be held immediately after the annual meeting of members. The annual meeting of members and at least one (1) of the meetings of the executive board in each year shall be held at the common interest community or at a place convenient to the community. After termination of a period of declarant control, all executive board meetings shall be at the common interest community or at a place convenient to the members of the community, unless the unit owners amend the bylaws to vary the location of those meetings.

(d) At each executive board meeting, the executive board shall provide a reasonable opportunity, subject to any reasonable time limits and other restrictions imposed by the presiding officer, for unit owners to comment regarding any matter affecting the common interest community and the association.

(e) Unless the declaration or bylaws otherwise provide, the executive board may meet by telephonic, video, or other conferencing process.

(f) After termination of a period of declarant control of the association, unit owners may amend the bylaws to vary the procedures for meetings described in subsection (g).

(g) Unless otherwise provided in the bylaws or declaration, or the law governing the applicable business entity, and subject to the approval of all the members of the executive board, the executive board may act without a meeting; provided, that advance written notice of any proposed action is given to all members of the executive board; and provided, further, that the proposed action is approved by the written consent of the number of members of the executive board that would be required to approve the action at a regularly called meeting of the executive board.

(h) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the executive board for failure to comply with this section shall not be brought more than one (1) year after the minutes of the executive board of the meeting at which the action was taken, or the written consent, as applicable, is placed in the records of the association.

66-27-613.

(a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if persons entitled to cast at least twenty percent (20%) of the

votes in the association are present in person or by proxy at the beginning of the meeting.

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

(c) Except as otherwise provided in the bylaws, meetings of the association shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

66-27-614.

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, or by a proxy pursuant to subsection (c), or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d).

(b) At a meeting of unit owners, the following requirements apply:

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

(2) If only one (1) of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one (1) of the unit owners are present, the votes allocated to that unit may be cast in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one (1) of the unit owners casts the votes allocated to the unit without protest being made

promptly to the person presiding over the meeting by any of the other owners of the unit; and

(3) Unless a greater number or fraction of the votes in the association is required by this part or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner;

(2) If a unit is owned by more than one (1) person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy;

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association;

(4) A proxy is void if it is not dated or purports to be revocable without notice; and

(5) The duration of a proxy is governed by the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51–68, including, but not limited to, § 48-57-205.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot;

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter;

(3) The ballot shall set forth each proposed action and provide an opportunity to vote for or against the action;

(4) When the association delivers the ballots, it shall also:

(A) Indicate the number of responses needed to meet the quorum requirements;

(B) State the percentage of votes necessary to approve each matter other than election of executive board members;

(C) Specify the time and date by which a ballot shall be delivered to the association to be counted, which time and date may not be fewer than three (3) days after the date the association delivers the ballot; and

(D) Describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so;

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death, disability, or attempted revocation by the person who cast that vote; and

(6) Approval by ballot pursuant to this subsection (d) is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

66-27-615. The association shall keep financial records sufficiently detailed to enable the association to comply with § 66-27-625. All financial and other records shall be made reasonably available for examination by any unit owner, the holder of any mortgage or deed of trust encumbering a unit, or their respective authorized agents.

66-27-616.

(a) The executive board shall have the authority to adopt, amend, or repeal rules governing the affairs of the association. Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any new or revised rule. Adoption, amendment, or repeal of a rule shall be binding on all unit owners and their guests, tenants, invitees, and occupants of their unit unless overturned by the affirmative vote of two-thirds (2/3) of all votes entitled to be cast with respect to any matter to be voted on by members of the association.

(b) A breach by any tenant of the rules of the association is a breach of the lease for that unit, whether or not a breach is provided in the lease. The association, by action of its executive board, has the right to evict the tenant and terminate the tenant's right to occupy the unit upon issuance of notice and right to cure, if any, as set out in the Tennessee Uniform Landlord and Tenant Act, compiled in chapter 28 of this title.

66-27-617.

(a) An association shall deliver any notice required to be given by the association under this part to any mailing address a unit owner designates. Otherwise, the association may deliver notices by:

(1) Hand delivery to each unit owner;

(2) Regular mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

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

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

(b) The ineffectiveness of a good faith effort to deliver notice by any means set out in subdivisions (a)(1)–(4) does not invalidate action taken at or without a meeting.

66-27-618.

(a)

(1) Subject to subsection (b), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(A) One hundred twenty (120) days after conveyance of seventy-five percent (75%) of the units that may be created to unit owners other than the declarant; or

(B) Five (5) years after the conveyance of the first unit to a purchaser other than the declarant or, if more than one hundred (100) units may be created in the common interest community, then seven (7) years after the first conveyance.

(2) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the period of declarant control, but in that event, the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before the specified actions become effective.

(3) Notwithstanding subdivision (a)(1), the declaration may provide that the declarant will maintain architectural control of the improvements being

constructed within the common interest community so long as the declarant owns any lot within the community, if the declaration so provides.

(b) No later than one hundred twenty (120) days after conveyance of twenty-five percent (25%) of the units that may be created to unit owners other than a declarant, at least one (1) member of the executive board shall be elected by unit owners other than the declarant.

(c) No later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three (3) members; provided, however, if the common interest community consists of fewer than three (3) units, the executive board may consist of one (1) executive board member for each unit in the common interest community. The executive board shall elect the officers. The executive board and officers shall take office upon election.

(d) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board without cause, other than a member appointed by the declarant.

(e) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners present in person or by proxy at any meeting of the unit owners at which a quorum is present may remove any member of the executive board or any officer elected by the unit owners, for cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal; provided:

(1) If a member removed for cause pursuant to this subsection (e) was appointed by the declarant and is removed during the period of declarant control, the association shall provide notice to the declarant requesting that the declarant appoint another member and notifying the declarant that if the declarant does not

replace the member within thirty (30) days after the notice is given, the association may replace the member, and the replacement shall be binding on the declarant;

(2) If a member is elected or appointed pursuant to the declaration by persons other than the declarant or the unit owners, that member may be removed only by the persons who elected or appointed that member; and

(3) The unit owners may not consider whether to remove a member of the executive board or an officer at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

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

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, if during the period of declarant control the declarant or its designated members of the executive board fail to actively participate in the administration of the affairs of the common interest community, then the period of declarant control shall be deemed to have terminated, the unit owners shall be entitled to elect the members of the executive board, and the declarant shall be bound by the decisions of the executive board in all matters relating to the administration of the affairs of the common interest community.

(h) For purposes of this section, "for cause" includes misfeasance, malfeasance, defalcation, theft, fraud, disability, incapacity, conviction of a felony, or conviction of a misdemeanor involving moral turpitude.

66-27-619.

(a)

(1) The executive board, at least annually, shall adopt a budget for the common interest community, which shall be distributed to the unit owners. If the declaration provides that the budget is subject to the approval of the unit owners, no later than thirty (30) days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded.

(2) Simultaneously with the distribution of the budget to the unit owners, the board shall also set a date no less than ten (10) days or more than sixty (60) days after providing the summary for a meeting of the unit owners to consider ratification of the budget.

(3) If the budget is ratified, it takes effect at the conclusion of the meeting provided by subdivision (a)(2), unless a majority of all unit owners or any larger number specified in the declaration reject the budget. The budget is ratified, whether or not a quorum is present.

(4) If a proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

(b) The executive board, at any time, may levy a special assessment. Except as otherwise provided in subsection (c), if the consent of the unit owners is required for a special assessment, the assessment shall be levied only if the executive board follows the procedures for ratification of a budget described in subsection (a), and the unit owners do not reject the proposed assessment.

(c)

(1) Notwithstanding any provision to the contrary set forth in the declaration, the executive board shall have the power at any time to levy assessments to:

(A) Maintain the infrastructure serving the common interest community, including, but not limited to, water, sewer, private utility systems, detention ponds, drainage facilities, and bridges;

(B) Comply with governmental requirements applicable to the common interest community; and

(C) Maintain the physical integrity of units to the extent the association has the obligation under the declaration.

(2) Assessments made pursuant to subdivision (c)(1) may be in the form of a single assessment or an assessment for reserves to be paid in installments as determined by the executive board.

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

(1) Unpaid assessments;

(2) Late charges;

(3) Reasonable attorney's fees and costs and other reasonable collection charges; and

(4) All other unpaid fees, charges, penalties, or interest.

66-27-620.

(a) No fee, late charge, or fine may be levied against a unit owner unless the fee, late charge, or fine is reasonable. The association shall make a schedule of any fees, late charges, and fines that may be imposed available to the unit owners, either by

inclusion in the declaration or by other reasonable means of notice. No fee, late charge, or fine may be levied against a unit owner unless the fee, late charge, or fine appears on the schedule previously made available to the unit owners.

(b) No fine may be imposed on a unit owner unless the unit owner has received notice and an opportunity to be heard.

(c)

(1) The association has a lien on a unit for any assessment levied against that unit or late charges or fines imposed against its unit owner from the time the assessment, late charge, or fine becomes due, which lien may be foreclosed by judicial action. The declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5; provided, the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under § 35-5-101. The notice required by this subsection (c) is sufficient if sent by regular mail:

(A) If to the unit owner at the unit or, if different, to the last address for the unit owner on file with the association; or

(B) If to a lienholder, at or to the address set forth in the instrument of record or, if different, at or to any other address as the lienholder may have on file with the association.

(2) Notice shall be deemed received three (3) days after deposit in the mail. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 66-27-608(b)(9)–(13) are enforceable as assessments under this section. If an assessment is payable in installments,

the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(d)

(1) A lien under this section is prior to all other liens and encumbrances on a unit except:

(A) Liens and encumbrances recorded before the recordation of the declaration;

(B) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or

(C) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) The lien is also prior to the mortgages and deeds of trust described in subdivision (d)(1)(B) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to § 66-27-619, which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien; provided, the lien shall not have the priority provided for in this section over the mortgages and deeds of trust described in subdivision (d)(1)(B) in the event that the unit owner or the holder of any first mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date six (6) months of assessments for common expenses due from the unit became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of

trust at the address provided by the party. This subdivision (d)(2) does not affect the priority of mechanics' or materialmen's liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

(e) Unless the first recorded declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have priority based upon the priority of recording of the declarations creating the liens.

(f) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(g) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.

(h) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(i) A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(j) The association, upon written request, shall furnish to a unit owner, or to a holder of any mortgage or deed of trust encumbering the unit, or their respective authorized agents, a written statement setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within seven (7) days after receipt of the request and is binding on the association.

66-27-621.

(a) The liability of a unit owner in an unincorporated association for a judgment against the association is limited to the percentage that the vote in the association's affairs applicable to that owner's unit bears to the total number of votes in the association's affairs applicable to all units in the association.

(b) If the association has granted a security interest in the common areas to a creditor of the association, the holder of that security interest shall exercise its right against the common areas only.

(c) Whether perfected before or after the creation of the common interest community, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied, becomes effective against two (2) or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to that owner's unit. The lienholder, upon receipt of payment, shall deliver a release of the lien covering the unit. The amount of the payment shall be proportionate to the ratio which the unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) A judgment against the association shall be indexed in the name of the common interest community and the association.

66-27-622.

(a) Except in connection with the exercise of rights reserved to the declarant or amendments to be executed by the declarant, association or certain unit owners as provided in the declaration and as limited by subsections (d) and (e), the declaration, including plats and plans, may be amended only by vote or agreement of owners of units

to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one (1) year after the amendment is recorded.

(c) Every amendment to the declaration shall be recorded in every county in which any portion of the common interest community is located, and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the common interest community and the association, and in the grantor's index in the name of the association.

(d) Except to the extent expressly permitted or required by other provisions of this part, no amendment shall change the boundaries of any unit, or the allocated interests of a unit, or prohibit the leasing of any unit, in the absence of the consent of all affected unit owners.

(e) Except to the extent expressly permitted or required by other provisions of this part, no amendment shall increase special declarant rights without the consent of sixty-seven percent (67%) of the votes of the association that are not allocated to the declarant.

(f) Amendments to the declaration required by this part to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

66-27-623.

(a) In addition to any other remedy provided by the declaration, any right or obligation declared by this part is enforceable by judicial proceeding. If any person

subject to this part fails to comply with this part or the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in a case involving willful failure to comply with this part, or the declaration or bylaws, may award reasonable attorney's fees.

(b) Parties to a dispute arising under this part, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution; provided:

(1) A declarant may agree with the association to resolve a dispute through alternative dispute resolution only after the period of declarant control has expired; and

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

(c) The remedies provided by this part shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential or special damages shall not be awarded except as specifically provided in this part or by other rule of law.

66-27-624.

(a) An association shall be deemed to be an inactive association if:

(1) The association is a corporation that has been administratively dissolved; or

(2) The association is an unincorporated association and neither the unit owners nor the executive board has had a meeting within the immediately preceding three-year period.

(b) An inactive association that was a corporation may be reinstated by one (1) or more unit owners as follows:

(1) The unit owner or owners shall deliver a charter to the secretary of state for filing that conforms in all material respects to the charter in effect at the time of administrative dissolution, except as follows:

(A) If the original name of the association is not available, another name may be used; and

(B) Any modifications shall be permitted that may be required for the charter to comply with any other applicable law;

(2) Within thirty (30) days following the date the charter is filed, the unit owner or owners shall deliver a notice to each unit owner of the place, date, and time of the organizational meeting in accordance with other applicable law, which notice shall be accompanied by the following:

(A) A copy of the filed charter;

(B) The proposed bylaws for the association; provided, that if the last bylaws in effect for the association are recorded or otherwise available to the incorporator, the proposed bylaws shall conform in all material respects to the prior bylaws;

(C) If not named in the charter or bylaws, the names of the nominated executive board members; and

(D) A proposed annual budget for the association, which shall include the proposed assessments, if any, for each unit for the next twelve (12) months;

(3) If a number of unit owners sufficient to form a quorum fail to attend the meeting designated in the notice given pursuant to subdivision (b)(2):

(A) The proposed bylaws shall be deemed adopted;

(B) The executive board members named in the charter, the bylaws, or the notice shall be deemed elected and shall continue to serve until replaced as provided in the bylaws; and

(C) To the extent the declaration requires the approval of the unit owners for the budget or assessments, the proposed budget and assessments shall be deemed approved.

(c) An inactive, unincorporated association may be reinstated by one (1) or more unit owners as follows:

(1) The unit owner or owners shall deliver notice to each unit owner of the place, date, and time of the organizational meeting no fewer than ten (10) days nor more than two (2) months before the meeting date, which notice shall be accompanied by the following:

(A) The proposed bylaws for the association; provided, that if the last bylaws in effect for the association are recorded or otherwise available to the unit owners sending the notice, the proposed bylaws shall conform in all material respects to the prior bylaws;

(B) The names of the executive board members nominated pursuant to the declaration or bylaws, as applicable; and

(C) A proposed annual budget for the association, which shall include the proposed assessments, if any, for each unit for the next twelve (12) months;

(2) If a number of unit owners sufficient to form a quorum fail to attend the meeting designated in the notice sent pursuant to subdivision (c)(1):

(A) The proposed bylaws shall be deemed adopted;

(B) The nominated executive board members shall be deemed elected and shall continue to serve until replaced as provided in the bylaws; and

(C) To the extent the declaration requires the approval of the unit owners for the budget or assessments, the proposed budget and assessments shall be deemed approved.

(d) The notices required in subdivisions (b)(2) and (c)(1) shall be delivered:

(1) To the unit, if the unit owner is in occupancy of the unit; or

(2) To the address for the unit set forth in the tax assessor's records if the unit owner is not in occupancy of the unit.

66-27-625.

(a) The association, upon request from a unit owner, a purchaser, or any lender to a unit owner or a purchaser, or their respective authorized agents, shall provide to the requesting party, within ten (10) business days following the date of the association's receipt of the request, the information specified in subsection (e), to the extent applicable. It shall be the responsibility of a unit owner to advise a purchaser or lender, upon request, how the association may be contacted. The association may charge a reasonable fee for providing the information which, if not paid, may be assessed against the unit whose owner, lender, or purchaser requested the information.

(b) A declarant, prior to the first sale of any interest in a unit to a third-party purchaser, shall, upon request, and within ten (10) business days following the date of the declarant's receipt of the request, provide the information specified in subsection (e), to the extent applicable and to the extent available, to any purchaser or prospective lender to a purchaser. If any of the information is not available within ten (10) business

days following the date of the request, then it shall be provided at least ten (10) business days prior to closing of the sale of the unit.

(c) The party requesting the information set out in subdivision (e) may rely on the information provided, unless the party has actual knowledge to the contrary.

(d) Any request to be made or information to be provided under this part shall be provided in writing or by electronic means, which may include e-mailing or posting to a web site and providing a link and access to the web site.

(e) The information to be provided pursuant to this section shall include the following:

(1) The name and principal address of the declarant, during the period of declarant control only; the association; and the common interest community;

(2) A copy of the recorded, or if not recorded, then in substantially final form to the extent available, declaration, bylaws, charter, or articles of association of the association, and all amendments of and exhibits to each;

(3) A copy of the current rules of the association;

(4) The most recent balance sheet, income statement, and approved budget for the association, or, if there has never been an approved budget, then the projected budget. The budget shall include:

(A) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements, and whether or not any study has been done to determine adequacy of reserves, and if a study has been done, where the study will be made available for review and inspection;

(B) A statement of any other reserves;

(C) The projected aggregate annual common expense assessments by category of expenditures for the association;

(D) The projected monthly common expense assessments, or the method of calculating each unit's share of the assessments, for each type of unit;

(E) A description of any indebtedness secured by the common areas or other amenities owned by the association or available for the use of the unit owners; and

(F) A description of any lease affecting the common areas or amenities owned by the association or available for the use of the unit owners;

(5) Minutes of all meetings of the members and the executive board of the association for the twenty-four-month period ending on the date of the request;

(6) The current monthly assessments and any special assessments applicable to the unit in question, and the amount of any delinquencies in any assessments applicable to the unit;

(7) Any fees or assessments due as a result of a transfer of the applicable unit;

(8) The amount and nature of any additional fees currently imposed for use by members of the common areas or other amenities;

(9) A statement of the insurance coverage, which may be provided in the form of an appropriate certificate from the insurer, maintained by the association that includes the types of coverage, limits, and deductibles of the insurance;

(10) A statement of any unsatisfied judgments and a description of any pending suits against the association;

(11) A description of any pending suits filed by the association, other than for the collection of delinquent assessments;

(12) The total amount of current monthly, annual, or special assessments for all units in the common interest community that are more than sixty (60) days past due, as of the most recent available report, but in no event more than ninety (90) days prior to the date of the request; and

(13) Whether the executive board is still under declarant control and, if under declarant control, when that period of control ends.

(f) If the declarant prepared or caused to be prepared all or a part of the information required by this part, the declarant may be held liable for any materially false or misleading statements, or for any material omissions of any required information, with respect to that portion of the information that the declarant prepared. The declarant shall not be liable for:

(1) Any false or misleading information or for any omission of material fact unless the declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission; or

(2) Failure of the association to provide information under this section that was prepared by the declarant, following the end of the period of declarant control.

(g)

(1) If the association or declarant, as applicable, fails to provide the information required by this section within the required time period, then the

association or declarant, as applicable, shall be liable for and shall pay a fine or penalty of:

(A) Two hundred fifty dollars (\$250) to the party on whose behalf the request is made, following the first request;

(B) Five hundred dollars (\$500) if the association or declarant does not supply the information within ten (10) business days following the second request; and

(C) All costs, including reasonable attorney's fees, incurred in obtaining the information or enforcing the fines.

(2) Neither a purchaser of a unit, nor any unit owned by a purchaser, shall be liable for any past due assessments that would have been disclosed if information would have been provided within ten (10) business days following the second request for the information; provided, that the requesting party did not have actual knowledge of the past due assessments at the time the unit was acquired by the purchaser.

(3) The fines and penalties set out in this subsection (g) shall not be the exclusive remedy of an aggrieved party, but shall be in addition to all other remedies to which the party shall be entitled at law or in equity, including, but not limited to, specific performance.

(h) If, at the time of a request made pursuant to the section, the declarant is in control of the association and the common interest community, then the declarant shall provide the information required within ten (10) business days following receipt of a written request; provided, if the information is not available at the time of the request, then the declarant shall provide the information required within ten (10) business days

prior to closing the real estate transaction. If the information is not provided within the time required by this subsection (h), then the prospective buyer:

(1) Shall have the right to rescind the real estate contract upon notice to the declarant;

(2) May extend the closing date until a date that is ten (10) business days following the date upon which the information is provided; and

(3) May seek specific performance of this section in a court of competent jurisdiction, and shall be entitled to recover all costs and expenses incurred in seeking specific performance, including reasonable attorney's fees.

66-27-626. The principles of law and equity, including the law of corporations and any other form of organization authorized by the law of this state, as well as unincorporated associations, the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement this part except to the extent inconsistent with this part. If there is a conflict between this part and another law, this part shall prevail.

SECTION 2. This act shall take effect July 1, 2015, the public welfare requiring it.