

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 29 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 an incorporated or  
8                    unincorporated organization that is comprised 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," "board," or "executive board," means the executive body  
13                   of an association, regardless of name, designated in the declaration or bylaws to  
14                   act on behalf of an 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 acting in concert who:  
27                   (a) As part of a common promotional plan for the planned community,

1 formulated, sponsored, and promoted by the person or persons, offers to  
2 dispose of his or her interest in a lot within the planned community not  
3 previously disposed of;

4 (b) Reserves or succeeds to any special declarant right; or

5 (c) Signs the declaration, and its successors or assigns who may submit  
6 property to a declaration.

7 (11) "Declarant control" means the period of time in which the declarant controls the  
8 association by appointing or electing the members of the association's board of  
9 directors.

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

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

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

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

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

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

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

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

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

- 1 (14) "Disposition" means a voluntary transfer to a purchaser of any legal or equitable  
2 interest in a lot, but does not include the creation, assignment, transfer, or release  
3 of a mortgage or security interest.
- 4 (15) "Dwelling unit" means a building or portion of a building that is designed and  
5 intended for use and occupancy for residential purposes by a single household  
6 and may share common walls, roofing, or other common structural elements.
- 7 (16) "Lot" means any plot or parcel of land designated for separate ownership or  
8 occupancy shown on a recorded subdivision plat for a planned community or the  
9 boundaries of which are described in the declaration or in a recorded instrument  
10 referred to or expressly contemplated by the declaration, other than a common  
11 area.
- 12 (17) "Master association" means an organization described in Section 4 of this Act,  
13 whether or not it is also an association described in Section 3 of this Act.
- 14 (18) "Multi-unit planned community" means a residential community, excluding  
15 condominiums, comprised of individual lots where two (2) or more dwelling units  
16 share at least one (1) common building component such as a wall or roof, and  
17 which a deed, common plan, or declaration requires any of the following:
- 18 (a) That owners become members of an association that governs the  
19 community;
- 20 (b) That owners or the association holds or leases property or facilities for the  
21 benefit of the owners;
- 22 (c) That owners support by membership or fees facilities for all owners to use;  
23 or
- 24 (d) The association is responsible for the exterior maintenance, repair, or  
25 replacement of building components.
- 26 (19) "Owner" means a declarant or other person who owns a lot in a planned  
27 community but does not include any person that has an interest in a lot solely as

1 security for an obligation.

2 (20) "Person" means a natural person, corporation, business trust, estate, trust,  
3 partnership, association, joint venture, limited liability company, government,  
4 governmental subdivision or agency, or other legal or commercial entity.

5 (21) "Planned community" means a residential community, excluding  
6 condominiums, comprised of individual lots for which a deed, common plan, or  
7 declaration requires any of the following:

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

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

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

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

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

23 (24) "Recording data" means the book and page number of instruments recorded in  
24 the office of a county clerk.

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

26 (26) "Rule" means a policy, guideline, restriction, procedure, or regulation of an  
27 association, however denominated, which is not set forth in the declaration or

1 bylaws and which governs the conduct of persons or the use or appearance of  
 2 property.

3 (27) "Special declarant rights" means rights reserved for the benefit of a declarant to:

4 (a) Complete improvements indicated on plats and plans filed with the  
 5 declaration;

6 (b) Exercise any development rights;

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

9 (d) Use easements through the common elements of the purpose of making  
 10 improvements within the planned community or within real estate which  
 11 may be added to the planned community;

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

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

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

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

18 (1) All planned communities in this Commonwealth are subject to the provisions of  
 19 Sections 1 to 29 of this Act. No person shall establish a planned community  
 20 unless that person files and records a declaration for that planned community in  
 21 the office of the county clerk of the county or counties in which the planned  
 22 community is located.

23 (2) Any declaration for a planned community shall be accompanied by bylaws that  
 24 provide for the operation of the planned community. The declaration and bylaws  
 25 shall provide for the following:

26 (a) The election of the executive board of the association;

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

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

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

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

5 (f) Whether the services of a manager or managing agent may be engaged;

6 (g) The method of amending the declaration and bylaws;

7 (h) The time and place for holding meetings and the manner of and authority  
 8 for calling, giving notice of, and conducting meetings;

9 (i) The common expenses for which assessments may be made and the manner  
 10 of collecting from owners their respective shares of the common expense;  
 11 and

12 (j) Any other matters the original declarant or the association deem necessary  
 13 and appropriate.

14 (3) Unless otherwise specifically stated, nothing in Sections 1 to 29 of this Act  
 15 invalidates any provision of a document that governs a planned community if  
 16 that provision was in the document at the time the document was recorded and  
 17 the document was recorded prior to the effective date of this Act.

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

20 Unless otherwise stated in the declaration, a homeowners' association shall be  
 21 organized no later than the date the first lot in the planned community is conveyed.  
 22 The membership of the association shall at all times consist exclusively of all the  
 23 owners or their heirs, successors, or assigns. The association shall be organized as a  
 24 nonprofit corporation or as an unincorporated association.

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

27 (1) If the declaration for a planned community provides that any of the powers set

1 forth in Section 8 of this Act are to be exercised by or may be delegated to a for-  
2 profit or nonprofit corporation or unincorporated association which exercises  
3 those or other powers on behalf of one (1) or more planned communities for the  
4 benefit of the owners of one (1) or more planned communities, all provisions of  
5 Sections 1 to 29 of this Act applicable to homeowners' associations apply to the  
6 corporation or unincorporated association, except as indicated in this section.

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

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

17 (4) The rights and responsibilities of owners with respect to the homeowners'  
18 association set forth in Sections 10 and 11 of this act apply in the conduct of the  
19 affairs of a master association only to those persons who elect the board of a  
20 master association, whether or not those persons are otherwise owners within the  
21 meaning of Sections 1 to 29 to of this Act.

22 (5) Notwithstanding the provisions of Section 6 of this Act with respect to the election  
23 of the executive board of an association by all owners after the period of  
24 declarant control ends and even if a master association is also an association  
25 described in Section 3 of this Act, the certificate of incorporation or other  
26 instrument creating the master association and the declaration of each planned  
27 community, the powers of which are assigned by the declaration or delegated to



1 the master association, may provide that the executive board of the master  
2 association shall be elected after the period of declarant control in any of the  
3 following ways:

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

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

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

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

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

14 Except for Sections 14 and 16 of this Act, all provisions of Sections 1 to 29 of this Act  
15 shall apply to multi-unit planned communities. Multi-unit planned communities shall  
16 also comply with the provisions contained in KRS 381.9197 and 381.9203 of the  
17 Kentucky Condominium Act.

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

20 (1) An association shall administer a planned community through an executive  
21 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 29 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) Except as provided in subsection (4) of this section, the declaration may provide  
6 for a period of declarant control of the association, during which period a  
7 declarant, or persons designated by the declarant, may appoint and remove the  
8 officers and directors of the executive board. Declarant shall have no authority to  
9 remove a director elected by the owners. Regardless of the period provided in the  
10 declaration, a period of declarant control terminates no later than the earlier of:

11 (a) For associations of fewer than three hundred (300) total lots:

12 1. Sixty (60) days after the conveyance of ninety-five percent (95%) of the  
13 created lots to owners other than a declarant or subsequent declarant;

14 2. Three (3) years after all declarants have ceased to offer lots for sale in  
15 the ordinary course of business; or

16 3. Ten (10) years after the first lot was conveyed to an owner other than  
17 a declarant.

18 (b) For associations with three hundred (300) or more total lots:

19 1. Sixty (60) days after the conveyance of ninety-five percent (95%) of the  
20 created lots to owners other than a declarant or subsequent declarant;

21 2. Five (5) years after all declarants have ceased to offer lots for sale in  
22 the ordinary course of business; or

23 3. Fifteen (15) years after the first lot was conveyed to an owner other  
24 than a declarant.

25 A declarant may voluntarily surrender the right to appoint and remove officers  
26 and members of the executive board before termination of that period, but in that  
27 event declarant may require, for the duration of the period of declarant control,

1 that specified actions of the association or executive board, as described in a  
2 recorded instrument executed by the declarant, be approved by the declarant  
3 before they become effective.

4 (4) Not later than sixty (60) days after conveyance of fifty percent (50%) of the lots  
5 created to an owner other than a declarant, at least one (1) director and not less  
6 than twenty percent (20%) of the directors of the executive board shall be elected  
7 by owners other than the declarant. Not later than sixty (60) days after  
8 conveyance of seventy-five percent (75%) of the lots created to owners other than  
9 a declarant, not less than thirty-three and one-third percent (33-1/3%) of the  
10 directors of the executive board shall be elected by owners other than the  
11 declarant.

12 (5) No later than the termination of any period of declarant control, the owners shall  
13 elect an executive board of at least three (3) directors. The executive board shall  
14 elect the officers. The board of directors and officers shall take office upon  
15 election.

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

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

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

1 (2) An owner shall permit agents or employees of the association and other owners'  
2 access through the owner's lot and dwelling unit for the purpose of fulfilling the  
3 association's duties and obligations. Any damage to the common areas, lot, or  
4 dwelling unit due to that access is the responsibility of the owner that caused the  
5 damage or the association if it is responsible for the damage. That owner, or the  
6 association, is liable for the prompt repair of any damage and, if not repairable,  
7 for the value of the damaged property or item as it existed immediately prior to  
8 that damage.

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

11 (1) Unless otherwise provided in the declaration or bylaws, the association, through  
12 its executive board, shall:

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

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

19 (2) No later than the first conveyance of a lot to a person other than a declarant, the  
20 association shall maintain the following to the extent reasonably available and  
21 applicable:

22 (a) Property insurance on the common areas;

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

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

25 (3) The association shall keep:

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

- 1        (b) Records showing the collection of the payment for common expenses and  
2        other charges received from the owners;
- 3        (c) Records detailing and supporting the payment for common expenses and  
4        other charges paid to contractors, suppliers, and service providers;
- 5        (d) Minutes of the meetings of the association and executive board; and
- 6        (e) Record of the names and mailing addresses of the owners. It shall be the  
7        owner's sole responsibility to maintain with the secretary of the association  
8        or his or her designee the owner's current mailing address and contact  
9        information.
- 10      (4) An association, through its executive board, in addition to the rights stated in the  
11      declaration and bylaws, may:
- 12      (a) Hire and fire management personnel, attorneys, accountants, and other  
13      independent professionals and employees that the board determines are  
14      necessary or desirable in the management of the property or the  
15      association;
- 16      (b) Commence, defend, intervene in, settle, or compromise any civil, criminal,  
17      or administrative action or proceeding that is in the name of, or threatened  
18      against, the association, the executive board, or the property, or that  
19      involves two (2) or more owners and relates to matters affecting the  
20      property;
- 21      (c) Enter into contracts and incur liabilities relating to the operation of the  
22      property;
- 23      (d) Enforce all provisions of the declaration, bylaws, covenants, conditions,  
24      restrictions, and articles of incorporation governing the lots and common  
25      areas;
- 26      (e) Adopt and enforce rules that regulate the maintenance, repair, replacement,  
27      modification, and appearance of common areas, and any other rules

- 1           provided for in the declaration;
- 2           (f) Acquire, encumber, and convey or otherwise transfer real and personal  
3           property;
- 4           (g) Hold in the name of the association the real property and the personal  
5           property;
- 6           (h) Grant easements, leases, licenses, and concessions through or over the  
7           common areas;
- 8           (i) Levy and collect fees or other charges for the use, rental, or operation of the  
9           common areas or for services provided to owner;
- 10          (j) Pursuant to Section 18 of this Act, levy the following:
- 11           1. Interest and charges for the late payment of assessments;
- 12           2. Returned check charges;
- 13           3. Enforcement assessments and fines for violations of the declaration,  
14           bylaws, or any rules and regulations of the association;
- 15           4. Charges for damage to common areas or other property; and
- 16           5. Reasonable charges for preparing, recording, or copying the  
17           declaration, bylaws, amendments to the declaration or bylaws, resale  
18           certificates required under Section 15 of this Act, or statement of  
19           unpaid assessments;
- 20          (k) Adopt and amend rules that regulate the collection of delinquent  
21          assessments and the application of payments of delinquent assessments;
- 22          (l) Authorize entry to any portion of the planned community by designated  
23          individuals when conditions exist that involve an imminent risk of damage  
24          or harm to common areas, another dwelling unit, or to the health or safety  
25          of the occupants of that dwelling unit or another dwelling unit;
- 26          (m) Subject to subsection (1) of Section 25 of this Act, borrow money and assign  
27          the right to common assessments or other future income to a lender as

- 1           security for a loan to the association;
- 2           (n) Suspend the voting privileges and use of recreational facilities of an owner
- 3           that is delinquent in the payment of assessments for more than thirty (30)
- 4           days;
- 5           (o) Purchase directors and officers insurance and fidelity bonds the directors
- 6           consider appropriate and necessary;
- 7           (p) Invest excess funds in investments that meet standards for fiduciary
- 8           investments under applicable state law; and
- 9           (q) Exercise powers that are:
- 10           1. Conferred by the declaration or bylaws;
- 11           2. Necessary to incorporate the owner's association as a nonprofit
- 12           corporation;
- 13           3. Permitted to be exercised by a nonprofit corporation in this state; or
- 14           4. Necessary and proper to govern and operate the association.

15           ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO

16 READ AS FOLLOWS:

- 17           (1) Unless otherwise specified in the declaration, the owners may amend the
- 18           declaration by consent of the majority of the owners of all lots of the planned
- 19           community, either in writing or in a meeting called for that purpose. No
- 20           amendment to the declaration shall be effective until filed in the office of the
- 21           county recorded.
- 22           (2) Unless otherwise specified in the declaration, the executive board may amend the
- 23           bylaws by the consent of a majority of the board.
- 24           (3) A vote to terminate the applicability of the declaration and to dissolve the planned
- 25           community shall be in accordance with the terms of the declaration or subsection
- 26           (1) of this section.
- 27           (4) An action to challenge the validity of an amendment adopted by the declarant or

1 the association shall not be brought more than one (1) year after the amendment  
2 is recorded.

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

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

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

22 (3) Unless the bylaws provide otherwise, a quorum is deemed present throughout any  
23 meeting of the association if persons entitled to cast ten percent (10%) of the total  
24 lots which may be cast are present in person, by absentee ballot, or by proxy at  
25 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) Unless specifically stated in the declaration or bylaws, each lot shall have  
17 one (1) vote and cumulative voting shall not be allowed. The declaration or  
18 bylaws may provide for the option of electronic voting or 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 executive board may act in all instances on behalf of the association.  
27 In the performance of their duties, the officers and members of the board shall

1 act in accordance with Section 13 of this Act.

2 (2) The executive board shall not act on behalf of the association to amend the  
3 declaration, to terminate the planned community, or to elect members of the  
4 executive board or determine the qualifications, powers, and duties, or terms of  
5 office of the directors, but the executive board may select individuals to fill  
6 vacancies for unexpired portion of any board term. This section shall not limit  
7 the power or authority of the declarant as 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) Use of proxies by directors for purposes of determining quorums or to cast votes  
13 is prohibited.

14 (5) After the termination of the declarant control period, the executive board shall  
15 adopt an annual budget for the planned community. The board shall:

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

18 (b) If the adopted budget contains an increase of greater than fifteen percent  
19 (15%) from the previous year's budget, set a date for a meeting of the  
20 association to consider ratification of the budget which shall not be less  
21 than fourteen (14) days nor more than thirty (30) days after providing the  
22 summary. The budget shall be deemed ratified, whether or not a quorum is  
23 present, unless at that meeting a majority of all the owners, or any larger  
24 vote specified in the declaration, reject the budget. If the budget is rejected,  
25 the existing budget shall be continued until such time as a subsequent  
26 budget is adopted by the executive board in conformity with this subsection.

27 The provisions of this subsection shall override any limitation on the amount of

1       assessments or the amount of annual increases that may be contained in existing  
2       declarations, bylaws, rules, or regulations of any planned community.

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

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

8       (2) A board may act in all instances on behalf of an association unless otherwise  
9       provided in the declaration, bylaws, or Sections 1 to 29 of this Act. The board may  
10       appoint persons to fill vacancies in its membership for the unexpired portion of  
11       any term.

12       (3) The board may hold a meeting by any method of communication, including  
13       electronic or telephonic communication, provided that each member of the board  
14       can hear or read in real time and participate and respond to every other member  
15       of the board.

16       (4) In lieu of conducting a meeting, the board may take action with the unanimous  
17       written consent of the members of the board. Any written consent shall be filed  
18       with the minutes of the meetings of the board.

19       (5) The board shall have the power to convene a confidential executive session to  
20       discuss or deliberate any item or topic the board deems to be of confidential  
21       nature. No owner other than a director may attend or participate in any  
22       discussion or deliberation of an executive session unless the board expressly  
23       authorizes that owner to attend or participate. The board shall not vote to take  
24       any action in an executive session. To document an action discussed during  
25       executive session, the board must close the executive session and reconvene the  
26       regular meeting. Action may then be voted on in regular session and recorded in  
27       the regular meeting minutes.

1 (6) The executive board of an association shall comply with all applicable state and  
2 federal laws concerning prohibitions against discrimination on the basis of race,  
3 color, religion, sex, military status, national origin, disability, age, or ancestry.  
4 No private right of action in addition to those conferred by the applicable state or  
5 federal laws is conferred on any aggrieved person by this subsection.

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

8 (1) A board member shall discharge his or her duties as an officer or member of the  
9 executive board or as a member of a committee:

10 (a) In good faith;

11 (b) On an informed basis; and

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

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

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

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

24 (b) Legal counsel, public accountants, or other persons as to matters the  
25 director believes are within the person's professional or expert competence;  
26 or

27 (c) A committee of the executive board of which he or she is not a member if

1 the board member believes the committee merits confidence.

2 (4) A board member shall not be considered to act in good faith if he or she has  
 3 knowledge concerning the matter in question that makes reliance otherwise  
 4 permitted by subsection (3) of this section unwarranted.

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

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

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

15 (6) A person bringing an action for monetary damages under this section shall have  
 16 the burden of proving by clear and convincing evidence the provisions of  
 17 subsection (5) of this section, and the burden of proving that the breach or failure  
 18 to perform was the legal cause of the damages suffered.

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

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

25 (2) No later than one hundred eighty (180) days after the end of the fiscal year, or  
 26 annually on a date provided in the declaration or bylaws, the association shall  
 27 cause to be prepared a financial report for the preceding fiscal year. No later

1 than thirty (30) days after the financial report is prepared and received by the  
2 executive board, the association shall make it available for examination by any  
3 lot owner and, upon request and payment of a reasonable fee, shall provide a lot  
4 owner with a copy of the financial report.

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

9 (b) An association with total annual revenues of at least one hundred thousand  
10 dollars (\$100,000) but less than five hundred thousand dollars (\$500,000)  
11 shall have prepared a financial report under the standards of a compilation  
12 by a certified public accountant.

13 (c) As association with total annual revenues of at least five hundred thousand  
14 dollars (\$500,000) but less than two million dollars (\$2,000,000) shall have  
15 prepared a financial report under the standards of review by a certified  
16 public accountant.

17 (d) An association with total annual revenues of two million dollars  
18 (\$2,000,000) or greater shall have prepared a financial report under the  
19 standards of an audit by a certified public accountant.

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

24 (f) Multi-unit planned communities shall comply with the financial records  
25 provisions of KRS 381.9197 of the Kentucky Condominium Act.

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 executive board, an owner may not examine or copy any  
 9 of the 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 enforcement of the declaration, bylaws, or  
 19 rules of the association against other owners;

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

23 (f) Information the disclosure of which is prohibited by state or federal law.

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

26 (1) A seller of a dwelling lot or lot in a planned community, other than a dwelling  
 27 unit or lot in multi-unit planned communities, shall furnish to a purchaser or

1 purchaser's agent prior to execution of any contract for sale of a lot, or otherwise  
 2 before conveyance a planned community association disclosure form that  
 3 includes:

4 (a) A statement indicating the recorded name of the planned community's  
 5 name as stated in the declaration:

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

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

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

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

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

19 (2) Sellers of units in multi-unit planned communities shall comply with the  
 20 provisions in KRS 381.9197 and 381.9203 of the Kentucky Condominium Act.

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

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



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

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

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

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

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

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

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

23      **(c) Costs associated with the enforcement of the declarations, bylaws, or rules**  
24      **and regulations of the association, including but not limited to reasonable**  
25      **attorney's fees, costs, and other expense.; and**

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

27      **(2) Unless otherwise provided by the declaration, bylaws, or rules and regulations,**

1 the association shall credit any amount it receives from a lot owner pursuant to  
2 this section in the following order:

3 (a) To the oldest principal amounts the owner owes to the association for the  
4 common expenses chargeable against the lot;

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

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

7 (d) To collection costs and reasonable attorney's fees incurred by the  
8 association in collecting the assessment.

9 (3) Prior to imposing a charge for fines, damages, or an enforcement assessment  
10 pursuant to this section, the executive board shall give the owner a written notice  
11 that includes:

12 (a) A description of the property damage or violation;

13 (b) The amount of the proposed charge or assessment;

14 (c) A statement that the owner has a right to a hearing before the board to  
15 contest the proposed charge, fine, or assessment;

16 (d) A statement setting forth the procedures to request a hearing; and

17 (e) A reasonable date by which the owner must cure a continuing violation to  
18 avoid the proposed charge, fine, or assessment, if such opportunity to cure  
19 is applicable.

20 (4) (a) To request a hearing, the owner shall deliver a written notice to the board  
21 no later than the tenth day after receiving the notice required under this  
22 section. If the owner fails to make a timely request for a hearing, the right  
23 to the hearing is waived and the board may immediately impose a charge  
24 for fines, damages, or an enforcement assessment pursuant to this section.

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

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

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

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

10 (f) Multiple hearings are not required with respect to multiple charges for  
11 finances, damages, or an enforcement assessment pursuant to this section that  
12 all relate to the same violation or violations which are noticed at the same  
13 time.

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

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

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

26 (2) After termination of the declarant control period, the executive board shall hold a  
27 meeting of the association within thirty (30) days of passage of a special

1 assessment to allow lot owners an opportunity to rescind or reduce the special  
 2 assessment. A majority of the total number of lots of the planned community cast  
 3 in person, by absentee ballot, or by proxy shall be required to rescind or reduce  
 4 the special assessment.

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

11 (4) The failure of a lot owner to pay the special assessment allowed under subsection  
 12 (1) of this section shall entitle the association to the lien provided by Section 21 of  
 13 this Act as well as any other rights afforded a creditor under law.

14 (5) 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 access to any road within the  
 17 planned community that is a common area and provides direct access to the lot  
 18 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 (1) 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  
 24 they are subject and with the bylaws, rules, and regulations of the association, as  
 25 lawfully amended. Any violation is grounds for the association or any owner to  
 26 commence a civil action for damages, injunctive relief, or both, and an award of  
 27 costs and reasonable attorney's fees in both types of actions.

1 (2) Owners shall be responsible for the conduct of their residents, tenants, and  
2 persons occupying the dwelling unit and shall exercise all control necessary to  
3 ensure that occupants abide by the covenants, restrictions, rules, and regulations.  
4 Owners are responsible for the payment of all charges, assessments, damages, or  
5 finances that the association may levy against the property due to the misconduct of  
6 occupants.

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

9 (1) The association shall have a lien upon the real estate or interest in any lot for the  
10 non-payment of any assessment or charge levied in accordance with Sections 18  
11 and 19 of this Act, as well as any related interest, fines, administrative late fees,  
12 enforcement assessments, collection costs, and reasonable attorney's fees that are  
13 chargeable against the lot and that remain unpaid ten (10) days after any portion  
14 has become due and payable.

15 (2) A lien charged and filed against a property pursuant to this section is:

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

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

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

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

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

11 (c) A mortgage on a lot may contain a provision that secures and grants similar  
 12 priority for the mortgagee's advances for the payment of the portion of the  
 13 common expenses chargeable against the lot upon which the mortgagee  
 14 holds the mortgage.

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

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

24 Unless otherwise provided in the declaration, any surplus funds of the association  
 25 remaining after payment of or provision for common expenses and any prepayment of  
 26 reserves may be paid to each unit owner in proportion to his or her common expense  
 27 liabilities or credited to him or her to reduce his or her future common expense

1 assessments.

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

4 (1) (a) Consistent with required and optional elements of the comprehensive plan  
5 and zoning ordinances of all pertinent local governmental jurisdictions,  
6 homeowners are encouraged to preserve existing residential communities,  
7 promote available and affordable housing, protect structural and aesthetic  
8 elements of the residential community, and, as applicable, maintain roads  
9 and streets, easements, water and sewer systems, utilities, drainage  
10 improvements, conservation and open areas, recreational amenities, and  
11 other infrastructure and common areas that serve and support the  
12 residential community by the revival of a previous declaration of covenants  
13 and other governing documents that may have ceased to govern some or all  
14 parcels in the community.

15 (b) In order to preserve a residential community and the associated  
16 infrastructure and common areas for the purpose described in this section,  
17 the parcel owners in a community that was previously subject to a  
18 declaration of covenants that has ceased to govern one (1) or more parcels  
19 in the community may revive the declaration and the homeowners'  
20 association for the community upon approval by the parcel owners to be  
21 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 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 29 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 clerk of the Circuit Court in the county or counties where the  
19 affected parcels 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 attorneys' 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 executive board, on behalf of the association, has all powers necessary and

1 appropriate to affect a conveyance or encumbrance that subsection (1) of this  
2 section permits, 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 executive board shall have the authority to negotiate with the  
10 condemning authority, agree to an award or payment amount with the  
11 condemning authority without instituting condemnation proceedings, and upon  
12 such agreement, convey the subject common area to the condemning authority.  
13 Thereafter, the board may execute and record the deed of conveyance to the  
14 condemning authority.

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

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

20 (1) Neither the association nor any lot owner except the declarant shall be liable for  
21 the declarant's torts in connection with any part of the planned community which  
22 the declarant has the responsibility to maintain.

23 (2) An action alleging a wrong done by the association shall be brought against the  
24 association and not against any lot owner.

25 (3) If the wrong occurred during any period of declarant control and the association  
26 gives the declarant reasonable notice of and opportunity to defend against the  
27 action, the declarant who then controlled the association shall be liable to the

1 association or to any lot owner for:

2 (a) All tort losses not covered by insurance suffered by the association or that  
 3 lot owner; and

4 (b) All costs which the association would not have incurred but for a breach of  
 5 contract or other wrongful act or omission.

6 (4) Whenever the declarant is found to be liable to the association under this section,  
 7 the declarant shall be liable for all litigation expenses, including reasonable  
 8 attorney's fees, incurred by the association.

9 (5) Any statute of limitation affecting the association's right of action under this  
 10 section is tolled until the period of declarant control terminates. A lot owner is  
 11 not precluded from bringing an action contemplated by this section because he or  
 12 she is a lot owner, member or officer of the association. Liens resulting from  
 13 judgements against the association shall be governed by Section 21 of this Act.

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

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

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

25 Sections 1 to 29 of this Act shall be construed to establish a uniform framework for the  
 26 operation and management of planned communities in this state and to supplement  
 27 any planned community governing document that is in existence on the effective date

1 of this Act. In the event of a specific conflict between Sections 1 to 29 of this Act and  
2 express requirements or restrictions in such a governing document, the governing  
3 document shall control. Sections 1 to 29 of this Act shall control if any governing  
4 document is silent with respect to any provision of Sections 1 to 29 of this Act.

5 ➔SECTION 30. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
6 READ AS FOLLOWS:

7 (1) As used in this section:

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

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

21 (2) The governing documents of a homeowners' association shall not prohibit the  
22 outdoor display of political yard signs by an owner or resident on the owner's or  
23 resident's property thirty (30) days before any special, primary, or general  
24 election until seven (7) days after that election. The governing documents may  
25 include reasonable rules and regulations regarding the placement and manner of  
26 display of political yard signs.

27 ➔Section 31. Sections 1 to 29 of this Act may be cited as the Kentucky Planned

1 Community Act.