

HOUSE BILL 2209

By Russell

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 as a new part:

66-27-801.

This part is known and may be cited as the "Tennessee Homeowners
Association Act."

66-27-802.

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 § 66-27-818;

(3) "Association" means an organization composed of all the unit owners
that is structured pursuant to and has the powers and duties set out in § 66-27-
807;

(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 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 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 § 66-27-806;
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 a declarant right;

(10) "Declarant right" means a 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 amendments to the 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 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:

(A) Is inscribed on a tangible medium; or

(B) Is stored in an electronic or other medium and retrievable in perceivable form;

(16) "Residential purposes" means use for dwelling purposes and 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.

66-27-803.

Except as expressly provided in this part, an agreement must not vary the effect of this part or waive the rights conferred by this part.

66-27-804.

A contract or duty governed by this part imposes an obligation of good faith in the performance or enforcement of the contract or duty.

66-27-805.

(a) Except as otherwise provided in this part, this part applies to all common interest communities that may be used for residential purposes.

(b) Sections 66-27-811(a), 66-27-819(a) and (c), 66-27-821(d), and 66-27-824 apply to all common interest communities. Other provisions of this part apply to all common interest communities, but only with respect to events and circumstances occurring after July 1, 2022; provided, 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.

(c) The declaration, bylaws, or plats and plans of a common interest community created before July 1, 2022, may be amended to achieve a result permitted by this part, regardless of what applicable law provided prior to July 1, 2022.

(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.

66-27-806.

(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.

66-27-807.

(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 consists 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 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 the association's 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 a 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 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 § 66-27-819(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 § 66-27-824;

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

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

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

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

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

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

(c) The declaration must not impose limitations on the power of the association to deal with the declarant, the association's 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), the bylaws may delegate the powers set out in subdivisions (b)(2)–(17) to the executive board.

66-27-808.

(a) Except as otherwise provided in § 66-27-817, an association shall have an executive board created in accordance with the association's declaration or bylaws. Except as otherwise provided in the declaration, the bylaws, subsection (c), or this part, the executive board acts on behalf of the association.

(b) The executive board has the following powers:

(1) Subject to the right of the unit owners, to repeal a rule pursuant to § 66-27-815; and 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 a claim for unpaid assessments or other claims made by or against the executive board. The executive board does not have a duty to take enforcement action if the executive board determines that, under the facts and circumstances presented:

(i) The association's legal position does not justify taking an 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, the violation 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 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, the executive board
may fill vacancies in the executive board's membership for the unexpired portion
of a 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.

66-27-809.

(a) The bylaws of the association must 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 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 the association's powers the executive board or officers may delegate to other persons or to a managing agent;

(5) Which of the association's 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 other necessary or appropriate matters, including matters that could be adopted as rules.

(c) The bylaws for an association and amendments to the bylaws may be, and the bylaws of an association formed after July 1, 2022, and amendments to the bylaws must be, recorded in the county or counties where the property governed by the association is located. The bylaws are deemed to be in recordable form if signed by any officer of the association and the signature is notarized.

66-27-810.

(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 matters affecting the common interest community or the association, if 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 a 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, then 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 another method reasonably calculated to provide notice to the person, including electronic mail. The notice for a meeting must 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 the following items are to be considered at an annual meeting, then the notice for the meeting must 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, then the notice must include a statement of the general nature of the proposed amendment;

(2) A budget change requiring the approval of the unit or lot owners; or

(3) A 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) A unit owner must be given a reasonable opportunity at an annual meeting to comment regarding matters 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 remote means, if the remote means is consistent with § 66-27-811(e).

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

66-27-811.

(a) Meetings of the executive board and committees of the association authorized to act for the association must be open to the unit owners except during executive sessions. The executive board and committees shall hold an executive session only during a regular or special meeting of the board or a committee. A final vote or action must not be taken during an executive session. An executive session must 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 a 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 the board's members shall not use incidental or social gatherings of board members or other methods to evade the open meeting requirements in subsection (a).

(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, must 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 must 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 reasonable time limits and other restrictions imposed by the presiding officer, for unit owners to comment regarding matters 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 remote means.

(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, advance written notice of proposed action is given to all members of the executive board and 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, the action 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 must 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.

66-27-812.

(a) Unless the bylaws otherwise provide, a quorum is present throughout a 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 an action taken at a meeting of the executive board only if individuals entitled to cast a simple 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, then the affirmative vote of a simple 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 must be conducted in accordance with the most recent edition of Robert's Rules of Order.

66-27-813.

(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 another 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, then that owner is entitled to cast all the votes allocated to that unit. If more than one (1) of the unit owners are present, then 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 simple majority of the votes cast determines the outcome of an 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, then 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 the proxy 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 must set forth each proposed action and provide an opportunity to vote for or against the action;

(4) When the association delivers the ballots, the association 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 must 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.

66-27-814.

The association shall keep financial records sufficiently detailed to enable the association to comply with § 66-27-824. All financial and other records must be made reasonably available for examination by a unit owner, the holder of a mortgage or deed of trust encumbering a unit, or their respective authorized agents.

66-27-815.

(a) The executive board has 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 the association's action and provide a

copy of the new or revised rule. Adoption, amendment, or repeal of a rule is binding on all unit owners and their guests, tenants, invitees, and occupants of their unit unless overturned by the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast with respect to a matter to be voted on by members of the association.

(b) A breach by a 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 the association's executive board, may 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 Uniform Residential Landlord and Tenant Act, compiled in chapter 28 of this title.

66-27-816.

(a) An association shall deliver notice required to be given by the association under this part to the 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) Another method reasonably calculated to provide notice to the unit owner.

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

66-27-817.

(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 a 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, then 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 a 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 a meeting of the unit owners at which a quorum is present, may remove a member of the executive board without cause, other than a member appointed by the declarant.

(e) Notwithstanding a provision of the declaration or bylaws to the contrary, unit owners present in person or by proxy at a meeting of the unit owners at which a quorum is present may remove a member of the executive board or an 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, then the association must 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, then the association may replace the member, and the replacement is 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, then that member may be removed only by the persons who elected or appointed that member; and

(3) The unit owners shall 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 a 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 must be given a reasonable opportunity to speak before the vote.

(g) Notwithstanding a 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 is deemed to have terminated, the unit owners are entitled to elect the members of the executive board, and the declarant is bound by the decisions of the executive board in all matters relating to the administration of the affairs of the common interest community.

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

66-27-818.

(a)

(1) The executive board, at least annually, shall adopt a budget for the common interest community and distribute the budget to the unit owners. If the declaration provides that the budget is subject to the approval of the unit owners, then 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 reserves, and a statement of the basis on which the 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, then the budget takes effect at the conclusion of the meeting provided by subdivision (a)(2), unless a majority of all unit owners or a 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, then 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, then the assessment must 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 a provision to the contrary in the declaration, the executive board has 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 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) Other unpaid fees, charges, penalties, or interest.

66-27-819.

(a) A fee, late charge, or fine must not be levied against a unit owner unless the fee, late charge, or fine is reasonable. The association shall make a schedule of 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. A fee, late charge, or fine must not 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) A fine must not 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 an 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 gives notice of the association's 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 another address as the lienholder may have on file with the association.

(2) Notice is 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 § 66-27-807(b)(9)–(13) are enforceable as assessments under this section. If an assessment is payable in installments, then 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 § 66-27-818, 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 does not have the priority provided for in this section over the mortgages and deeds of trust described in subdivision (d)(1)(B) if the unit owner or the holder of a 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 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,

then 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. Further recordation of a claim of lien for assessment under this section is not 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 an action brought under this section must 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 a 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 must be furnished within seven (7) days after receipt of the request and is binding on the association.

66-27-820.

(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, then the holder of that security interest must exercise the holder's 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, then 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 must 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 must be indexed in the name of the common interest community and the association.

66-27-821.

(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 a larger majority the declaration specifies.

(b) An action to challenge the validity of an amendment adopted by the association pursuant to this section must not be brought more than one (1) year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which a portion of the common interest community is located, and is effective only upon

recordation. An amendment must 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 this part, an amendment must not change the boundaries of a unit, or the allocated interests of a unit, or prohibit the leasing of a unit, in the absence of the consent of all affected unit owners.

(e) Except to the extent expressly permitted or required by this part, an amendment must not 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 must be prepared, executed, recorded, and certified on behalf of the association by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

66-27-822.

(a) In addition to other remedies provided by the declaration, a right or obligation declared by this part is enforceable by judicial proceeding. If a person subject to this part fails to comply with this part or the declaration or bylaws, the 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 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 binding alternative dispute resolution must be in a record authenticated by the parties.

(c) The remedies provided by this part must 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 must not be awarded except as specifically provided in this part or by other rule of law.

66-27-823.

(a) An association is 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 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, then another name may be used; and

(B) A modification is permitted that may be required for the charter to comply with other applicable law;

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

(A) A copy of the filed charter;

(B) The proposed bylaws for the association; provided, if the last bylaws in effect for the association are recorded or otherwise available to the incorporator, then the proposed bylaws must 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, including the proposed assessments, if any, for each unit for the next twelve (12) months; and

(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 are deemed adopted;

(B) The executive board members named in the charter, the bylaws, or the notice are deemed elected and 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 are 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 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. The notice must be accompanied by the following:

(A) The proposed bylaws for the association; provided, if the last bylaws in effect for the association are recorded or otherwise available to the unit owners sending the notice, then 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, including the proposed assessments, if any, for each unit for the next twelve (12) months; and

(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 are deemed adopted;

(B) The nominated executive board members are deemed elected and 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 are deemed approved.

(d) The notices required in subdivisions (b)(2) and (c)(1) must 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.

66-27-824.

(a) The association, upon request from a unit owner, a purchaser, or a 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 is 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 an 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 a purchaser or prospective lender to a purchaser. If the information is not available within ten (10) business days following the date of the request, then the information must 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 subsection (e) may rely on the information provided, unless the party has actual knowledge to the contrary.

(d) A request to be made, or information to be provided, under this part must be provided in writing or by electronic means, including emailing or posting to a website and providing a link and access to the website.

(e) The information to be provided pursuant to this section includes 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 must 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 a 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 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 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 leases 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 special assessments applicable to the unit in question, and the amount of delinquencies in assessments applicable to the unit;

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

(8) The amount and nature of 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 unsatisfied judgments and a description of pending suits against the association;

(11) A description of 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, then the declarant is liable for materially false or misleading statements, or for material omissions of required information, with respect to that portion of the information that the declarant prepared. The declarant is not liable for:

(1) False or misleading information or for an 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, is liable for 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 a unit owned by a purchaser, is liable for 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 if 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) are not the exclusive remedy of an aggrieved party, but are in addition to all other remedies to which the party is entitled at law or in equity, including, but not limited to, specific performance.

(h) If, at the time of a request made pursuant to this section, the declarant is in control of the association and the common interest community, then the declarant must 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 must 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) Has 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 is entitled to recover all costs and expenses incurred in seeking specific performance, including reasonable attorney's fees.

66-27-825.

The principles of law and equity, including the law of corporations and other forms 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 prevails.

SECTION 2. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. This act takes effect July 1, 2022, the public welfare requiring it.