

FIRST REGULAR SESSION

# SENATE BILL NO. 178

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS SCHNEIDER AND ROHRBACH.

Pre-filed December 5, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0643S.021

## AN ACT

To repeal sections 355.131, 448.2-117, 448.3-102 and 448.3-106, RSMo 2000, relating to ownership of property, and to enact in lieu thereof four new sections relating to the same subject.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 355.131, 448.2-117, 448.3-102 and 448.3-106, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 355.131, 448.2-117, 448.3-102 and 448.3-106, to read as follows:

355.131. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including, without limitation, power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;
- (3) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in,

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

or obligations of, any entity;

(7) To make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 355.421;

(9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) To conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interests;

(14) To impose dues, assessments, admission and transfer fees upon its members **for services and benefits provided by the corporation to its members; however, no nonprofit corporation organized as a unit owners' association pursuant to chapter 448, RSMo, or as a property owners' association shall require or mandate that their members shall also be members of another corporation, hereinafter referred to as a second corporation, nor shall a nonprofit corporation organized as a unit owners' association or as a property owners' association have the power or authority to assess its members for the costs of services or benefits provided by a second corporation. This restriction shall not preclude a nonprofit corporation organized as a unit owners' association or as a property owners' association from allowing its members to voluntarily agree to belong to a second corporation and paying an assessment for the services or benefits provided by such second corporation;**

(15) To establish conditions for admission of members, admit members and issue memberships;

(16) To carry on a business or businesses, either directly or through one or more for-profit or nonprofit subsidiary corporations; and

(17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

448.2-117. 1. Except in cases of amendments that may be executed by a declarant under subsection 6 of section 448.2-109, or section 448.2-110; the association, under section 448.1-107,

subsection 4 of section 448.2-106, subsection 3 of section 448.2-108, or subsection 1 of section 448.2-112, or section 448.2-113; or certain unit owners under subsection 2 of section 448.2-108, subsection 1 of section 448.2-112, subsection 2 of section 448.2-113, or subsection 2 of section 448.2-118, and except as limited by subsection 4 of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

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

3. Every amendment to the declaration shall be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation. Every amendment shall be indexed in the name of the condominium, the association, and the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of sections 448.1-101 to 448.4-120, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

**5. By vote or agreement of unit owners of units to which at least eighty per cent of the votes in the association are allocated, or any larger percentage specified in the declaration, an amendment to the declaration may prohibit or materially restrict the permitted uses or occupancy of a unit or the number or other qualifications of persons who may occupy units. The amendment must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.**

[5.] **6.** Amendments to the declaration required by sections 448.1-101 to 448.4-120 to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

448.3-102. 1. Subject to the provisions of the declaration, the association, even if unincorporated, may:

- (1) Adopt and amend bylaws and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided, that common elements may be conveyed or subjected to a security interest only pursuant to section 448.3-112;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subdivisions (2) and (4) of section 448.2-102 and services provided to unit owners; **however, no not for profit corporation unit owner's association shall require the unit owners to be members of another corporation, hereinafter referred to as a second corporation, nor shall the not for profit unit owner's association have the power or authority to assess its unit owners for the costs of services or benefits provided by a second corporation. This restriction shall not preclude a not for profit unit owners' association from allowing the unit owners to voluntarily agree to belong to a second corporation and paying an assessment for the services or benefits provided by such second corporation;**
- (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 448.4-109, or statements of unpaid assessments;
- (13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
- (14) Assign its rights to future income, including the right to receive common expense assessments, but only to the extent expressly provided in the declaration;
- (15) Exercise any other powers conferred by the declaration or bylaws;
- (16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and
- (17) Exercise any other powers necessary and proper for the governance and operation of the association.

2. Notwithstanding the provisions of subsection 1 of this section, the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

448.3-106. 1. The bylaws of the association shall provide for:

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

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

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

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

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

(6) The method of amending the bylaws].

**2. The bylaws of a condominium association may be amended by a majority of the unit owners of units to which the votes in the association are allocated.**

[2.] **3.** Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

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