

SECOND REGULAR SESSION

# SENATE BILL NO. 1027

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

Read 1st time February 22, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6356S.011

## AN ACT

To amend chapter 449, RSMo, by adding thereto four new sections relating to homeowners' associations.

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

Section A. Chapter 449, RSMo, is amended by adding thereto four new sections, to be known as sections 449.100, 449.101, 449.105, and 449.110, to read as follows:

**449.100. As used in sections 449.101 to 449.110, the following terms mean:**

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

(2) "Declaration", the instrument, however denominated, that creates a planned community, including any amendments to that instrument;

(3) "Executive board", the body, regardless of name, designated in the declaration or bylaws which has power to act on behalf of the association;

(4) "Homeowners' association", or "association", the unit owners' association;

(5) "Person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. In the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee;

21           **(6) "Planned community"**, real property with respect to which a  
22 person, by virtue of such person's ownership of a unit, is obligated to  
23 pay real property taxes, insurance premiums, maintenance, or  
24 improvement of other real property described in a declaration. For the  
25 purposes of sections 449.101 to 449.110, neither a cooperative nor a  
26 condominium is a planned community, but real estate comprising a  
27 condominium or cooperative may be part of a planned community;

28           **(7) "Record"**, information that is inscribed on a tangible medium  
29 or that is stored in an electronic or other medium and is retrievable in  
30 perceivable form;

31           **(8) "Rule"**, a policy, guideline, procedure, or regulation of an  
32 association, however denominated, which is not set forth in the  
33 declaration or bylaws and which governs the conduct of persons or the  
34 use or appearance of property;

35           **(9) "Unit"**, a physical portion of the planned community  
36 designated for separate ownership or occupancy such as a lot as  
37 depicted on the plats or plans recorded with the declaration;

38           **(10) "Unit owner"**, a person who owns a unit, or a lessee of a unit,  
39 in a leasehold planned community whose lease expires simultaneously  
40 with any lease the expiration or termination of which will remove the  
41 unit from the planned community, but does not include a person having  
42 an interest in a unit solely as security for an obligation. Ownership of  
43 a unit does not include a leasehold interest of less than twenty years in  
44 a unit, including renewal options.

          449.101. 1. The bylaws of a homeowners' association may specify  
2 the qualifications, powers and duties, terms of office, and manner of  
3 electing and removing executive board members and officers and filling  
4 vacancies.

5           2. Notwithstanding provisions of subsection 1 of this section or  
6 any bylaws to which it refers to the contrary, the following provisions  
7 shall apply to election of executive board members of every  
8 homeowners' association in this state:

9           **(1)** Unless waived by a majority of the unit owners, executive  
10 board member elections shall be conducted by an independent third  
11 party, to be nominated by the executive board and approved by a  
12 majority of the votes present at a meeting held in accordance with  
13 section 449.105 and any absentee ballots or votes submitted as may be

14 provided under the association's declaration, bylaws, or rules;

15 (2) The result of any executive board member election shall be  
16 examined and determined only in a meeting held in accordance with  
17 section 449.105.

449.105. 1. All homeowners' associations within this state shall:

2 (1) Hold a meeting of unit owners at least annually at a time,  
3 date, and place stated in or fixed in accordance with the  
4 bylaws. Unless limited by the declaration or bylaws, meetings of unit  
5 owners may be conducted by telephone, video, or other conferencing  
6 process, if the alternative process is consistent with subsection 6 of this  
7 section;

8 (2) Hold a special meeting of unit owners to address any matter  
9 affecting the planned community or the association if:

10 (a) Approved by the executive board; or

11 (b) Twenty percent of the unit owners, or any lower percentage  
12 specified in the bylaws, of the votes of the association request in  
13 writing that the secretary call the meeting.

14 If the association does not notify the unit owners of a special meeting  
15 within thirty days after the requisite number or percentage of unit  
16 owners request the secretary to do so, the requesting members may  
17 directly notify all the unit owners of the meeting. Only matters  
18 described in the meeting notice required by subdivision (3) of this  
19 subsection may be considered at a special meeting;

20 (3) Notify unit owners of the time, date, and place of each annual  
21 and special association meeting not less than fifteen days nor more  
22 than sixty days before the meeting date. The minimum time to give  
23 notice may be reduced or waived for a meeting called to address an  
24 emergency. Notice shall be sent in accordance with the bylaws, or by  
25 first class mail, postage prepaid, to the unit owner's last known  
26 address, if different than the unit address, and the unit. Unless a unit  
27 owner does not consent, notices may be sent by electronic or other  
28 means. The notice shall contain the time, date, and place of the  
29 meeting and the items on the agenda.

30 2. Meetings of the executive board and committees of the  
31 association authorized to act for the association shall be open to the  
32 unit owners except during executive sessions. No final vote or action  
33 may be taken during an executive session. An executive session may be

34 held only to:

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

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

39 (3) Discuss labor or employee matters;

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

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

48 3. For purposes of this section, a gathering of board members at  
49 which the board members do not conduct association business is not a  
50 meeting of the executive board. The executive board and its members  
51 may not use incidental, electronic communications, or social gatherings  
52 of board members or any other method to evade the open meeting  
53 requirements of this section.

54 4. At each executive board meeting, the executive board shall  
55 provide a reasonable opportunity for unit owners to comment  
56 regarding any matter affecting the planned community and the  
57 association subject to reasonable time limitations.

58 5. If any materials are distributed to the executive board before  
59 the meeting, the executive board at the same time shall make copies of  
60 those materials reasonably available to unit owners, except that the  
61 board need not make available copies of unapproved minutes or  
62 materials that are to be considered in executive session.

63 6. Unless the declaration or bylaws otherwise provide, the  
64 executive board may meet by telephone, video, or other conferencing  
65 process if:

66 (1) The meeting notice states the conferencing process to be used  
67 and provides information explaining how unit owners may participate  
68 in the conference directly or by meeting at a central location or  
69 conference connection; and

70 (2) The process provides all unit owners the opportunity to hear

71 or perceive the discussion and to comment as provided in subsection  
72 4 of this section.

449.110. 1. The association shall keep financial records as  
2 specified in the declaration, bylaws, or other rules, but at least in  
3 sufficient detail to allow for examination of all expenditures and  
4 sources of revenue. All financial and other records of a homeowners'  
5 association shall be made reasonably available for examination by any  
6 unit owner and his authorized agents.

7 2. Subject to subsections 3 and 4 of this section, all records  
8 retained by an association shall be available for examination and  
9 copying by a unit owner or the owner's authorized agent upon written  
10 request stating the purpose for examination of the records. The board  
11 shall provide a schedule to the unit owner within five business days  
12 when the unit owner shall have the opportunity for examination and  
13 copying during reasonable business hours or at a mutually convenient  
14 location and time.

15 3. Records retained by an association may be withheld from  
16 inspection and copying to the extent that they concern:

17 (1) Personnel, salary, and medical records relating to specific  
18 individuals;

19 (2) Contracts, leases, and other commercial transactions to  
20 purchase or obtain goods or services currently being negotiated;

21 (3) Existing or potential litigation or mediation, arbitration, or  
22 administrative proceedings;

23 (4) Existing or potential matters involving federal, state, or local  
24 administrative or other formal proceedings before a governmental  
25 tribunal for enforcement of the declaration, bylaws, or rules;

26 (5) Communications with the association's attorney which are  
27 otherwise protected by the attorney-client privilege or the attorney  
28 work-product doctrine;

29 (6) Information, the disclosure of which would violate law other  
30 than sections 449.101 to 449.110; or

31 (7) Information relating to insurance coverage except for the  
32 declaration of coverage.

33 4. An association may charge a reasonable fee for providing  
34 copies of any records under this section and for the actual cost of  
35 personnel assisting or supervising the unit owner's inspection.

36           **5. A right to copy records under this section includes the right**  
37 **to receive copies by photocopying or other means, including copies**  
38 **through an electronic transmission, if available, upon request by the**  
39 **unit owner.**

40           **6. An association is not obligated to compile, format, or**  
41 **synthesize information.**

42           **7. Information provided pursuant to this section shall not be**  
43 **used for commercial purposes.**

✓  
Unofficial

Bill

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