

1 Section 1. Civil Code Article 783 is hereby amended and reenacted to read as
2 follows:

3 Art. 783. Matters of interpretation and application

4 Doubt as to the existence, validity, or extent of building restrictions is
5 resolved in favor of the unrestricted use of the immovable. The provisions of the
6 Louisiana Condominium Act, the Louisiana Timesharing Act, and the Louisiana
7 ~~Homeowners Association~~ **Planned Community** Act shall supersede any and all
8 provisions of this Title in the event of a conflict.

9 Section 2. Part II-B of Chapter 1 of Code Title I of Code Book II of Title 9 of the
10 Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:1141.1 through 1141.50, and
11 R.S. 9:2792.7(B)(3) and 3132(1)(g) are hereby amended and reenacted to read as follows:

12 PART II-B. LOUISIANA ~~HOMEOWNERS ASSOCIATION~~

13 **PLANNED COMMUNITY ACT**

14 SUBPART A. **DEFINITIONS AND GENERAL PROVISIONS**

15 §1141.1. Short title

16 This Part shall be known **and may be cited** as the "Louisiana ~~Homeowners~~
17 ~~Association~~ **Planned Community Act**".

18 §1141.2. Definitions

19 As used in this Part, ~~unless the context clearly indicates otherwise~~ **the**
20 **following terms have the meanings indicated below:**

21 (1) ~~"Association property" means all the property either held by the~~
22 ~~association or commonly held by the members of the association, or both, and lots~~
23 ~~privately held by members of the association.~~ **"Affiliate of the declarant" means**
24 **any person who controls, is controlled by, or is under common control with a**
25 **declarant. For purposes of this Paragraph:**

26 **(a) A person controls a declarant if the person satisfies any of the**
27 **following:**

28 **(i) The person is a general partner, officer, director, employer, or**
29 **manager of the declarant.**

1 (ii) The person directly or indirectly or acting in concert with one or
2 more other persons, or through one or more subsidiaries, owns, controls, holds
3 the power to vote, or holds proxies representing, more than twenty percent of
4 the voting interest in the declarant.

5 (iii) The person controls in any manner the election of a majority of the
6 directors of the declarant.

7 (iv) The person has contributed more than twenty percent of the capital
8 of the declarant.

9 (b) A person is controlled by a declarant if the declarant satisfies any of
10 the following:

11 (i) The declarant is a general partner, officer, director, employer, or
12 manager of the person.

13 (ii) The declarant directly or indirectly or acting in concert with one or
14 more other persons, or through one or more subsidiaries, owns, controls, holds
15 the power to vote, or holds proxies representing, more than twenty percent of
16 the voting interest in the person.

17 (iii) The declarant controls in any manner the election of a majority of
18 the directors of the person.

19 (iv) The declarant has contributed more than twenty percent of the
20 capital of the person.

21 (c) Control does not exist if the powers described in this Paragraph are
22 held solely as security for an obligation and are not exercised.

23 (2) "Assessment" means the sum allocable to each lot and due to the
24 association pursuant to R.S. 9:1141.32.

25 (3) "Association" or "lot owners association" means the lot owners
26 association organized pursuant to R.S. 9:1141.19.

27 (4) "Board of directors" means the body, regardless of name, designated
28 in the declaration or bylaws to conduct and supervise the affairs of the
29 association.

1 **(5) "Bylaws" means a written instrument that meets the requirements**
 2 **of R.S. 9:1141.25 and contains the procedures for the conduct of the affairs of**
 3 **the association, including any amendments to the instrument.**

4 ~~(2)(6)~~ "Common area" means **any immovable** property owned or otherwise
 5 maintained, repaired, or administered by the association **located within a planned**
 6 **community and designated as such on a recorded plat** for the benefit, use, and
 7 enjoyment of its members **or use by lot owners.**

8 **(7) "Common expense liability" means the liability for common expenses**
 9 **allocated to each lot pursuant to R.S. 9:1141.6.**

10 **(8) "Common expenses" means expenditures made by, or financial liabilities of, the**
 11 **association, together with any allocations to reserves for the benefit and use of the**
 12 **planned community.**

13 ~~(3)(9)~~ "Community **document or** documents" means the articles of
 14 incorporation, bylaws, ~~plat,~~ declarations, covenants, conditions, **building** restrictions,
 15 rules and regulations, or other written instruments, including any amendment thereto,
 16 by which the association has the authority to exercise any of its powers to manage,
 17 maintain, or otherwise affect the association **planned community or any**
 18 **immovable** property or which otherwise govern the use of association property
 19 **located therein.**

20 **(10) "Complete property description" means any description of**
 21 **immovable property that, if contained in a mortgage of the immovable property**
 22 **filed for registry, would be sufficient for the mortgage to be effective against**
 23 **third persons.**

24 **(11) "Declarant" means the person designated as such in the declaration**
 25 **or, in the absence of such a designation, the owner of the immovable property**
 26 **or the ground lessee who executes the declaration to establish the planned**
 27 **community.**

28 ~~(4)(12)~~ "Declaration" means any instrument, however denominated, that
 29 establishes or regulates, or both, a residential **creates a** planned community, and

1 **including** any amendment thereto **amendments to the instrument**.

2 (5) ~~"Homeowners association" or "association" means a nonprofit~~
3 ~~corporation, unincorporated association, or other legal entity, which is created~~
4 ~~pursuant to a declaration, whose members consist primarily of lot owners, and which~~
5 ~~is created to manage or regulate, or both, the residential planned community.~~

6 **(13) "Development right" means any right or combination of rights**
7 **reserved by a declarant in the declaration to do any of the following:**

8 **(a) Add immovable property to a planned community.**

9 **(b) Create lots, common areas, or limited common areas within a**
10 **planned community.**

11 **(c) Subdivide lots or convert lots into common areas.**

12 **(d) Withdraw immovable property from a planned community.**

13 **(14) "Director" means a person who serves on the board of directors**
14 **elected or appointed to conduct and supervise the affairs of the association.**

15 **(15) "Electronic transmission" or "electronically transmitted" means**
16 **any form or process of communication, not directly involving the physical**
17 **transfer of paper or another tangible medium, that is both of the following:**

18 **(a) Suitable for the retention, retrieval, and reproduction of information**
19 **by the recipient.**

20 **(b) Retrievable in paper form by the recipient through an automated**
21 **process used in conventional commercial practice, provided that this**
22 **requirement shall not apply if both of the following conditions are met:**

23 **(i) The electronic transmission is otherwise retrievable in perceivable**
24 **form.**

25 **(ii) The sender and the recipient have consented in writing to the use of**
26 **such form of electronic transmission.**

27 **(16) "Leasehold planned community" means a planned community in**
28 **which all or a portion of the immovable property is subject to a lease the**
29 **expiration or termination of which will terminate the planned community or**

1 reduce its size.

2 (17) "Limited common areas" means a portion of the common areas
3 allocated by the declaration or by operation of R.S. 9:1141.8 for the exclusive
4 use of one or more but fewer than all of the lot owners.

5 ~~(6)~~(18) "Lot" means any plot or parcel of land designated for separate
6 ownership shown on a recorded subdivision plat for a residential development or the
7 boundaries of which are otherwise described in a recorded instrument **immovable**
8 **property within a planned community designated for separate ownership on a**
9 **recorded plat**, other than common area, within the jurisdiction of the residential
10 community as such area is described in the community documents **areas**.

11 (19) "Lot owner" means a person appearing as an owner of a lot in the
12 conveyance records of the parish where the lot is located.

13 (20) "Majority vote" means the vote cast through a method permitted
14 by R.S. 9:1141.28 by more than fifty percent of the voting interest present at a
15 duly called meeting of the association.

16 (21) "Member" or "membership" means all lot owners, as well as
17 former lot owners, entitled to distributions of proceeds pursuant to R.S.
18 9:1141.15, or their heirs, successors, or assigns.

19 (22) "Nonresidential use" means any commercial, office, retail, or
20 similar type of use, or any other use that is not a residential use.

21 (23) "Occupant" means any person occupying a lot, including persons
22 occupying by permission or accommodation of the owner, former owner, or
23 another occupant, whether express or implied.

24 (24) "Person" means both natural persons and juridical persons as defined in Civil
25 Code Article 24, unless otherwise indicated.

26 ~~(7)~~(25) "Residential planned community" or "planned **Planned** community"
27 means a real estate development, used primarily for residential purposes, in which
28 the owners of separately owned lots are mandatory members of an association by
29 virtue of such ownership **immovable property described in a declaration that**

1 obligates lot owners to pay assessments related to common areas, to other lots,
2 or to other property described in the declaration. A planned community shall
3 not include condominium property subject to the Louisiana Condominium Act.

4 (26) "Record", used as a noun, means information that is inscribed on
5 a tangible medium or that is stored in an electronic or other medium and is
6 retrievable in perceivable form.

7 (27) "Residential use" means the use of a lot as a residence, including the
8 use of a multi-unit building as a residence, provided the building contains four
9 or fewer separate housing units, the building is located on a single lot, and the
10 entirety of the building is owned by the same person or persons.

11 (28) "Restriction" means an obligation imposed on a lot, whether
12 affirmative or negative, by the declaration.

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

17 (30) "Security right" means any form of security as defined in Civil Code
18 Article 3136.

19 (31) "Special declarant rights" means rights reserved for the benefit of
20 a declarant to do any of the following:

21 (a) Complete improvements indicated on plats filed with the declaration.

22 (b) Exercise any development right.

23 (c) Exercise sales and marketing rights in accordance with R.S.
24 9:1141.12.

25 (d) Establish any servitudes through the common areas for making
26 improvements within the planned community or within immovable property
27 that may be added to the planned community.

28 (e) Make the planned community subject to a master association.

29 (f) Combine a planned community with another planned community.

1 (g) Appoint or remove any officer of the association or any master
2 association or any director during any period of declarant control.

3 (h) Control any construction, design review, or aesthetic standards
4 committee or process.

5 (i) Attend meetings of the lot owners and, except during an executive
6 session, the board of directors.

7 (j) Have access to the records of the association to the same extent as a
8 lot owner.

9 (k) Set the number of directors and officers of the association.

10 (32) "Supermajority vote" means the vote cast through a method
11 permitted by R.S. 9:1141.28 by more than eighty percent of the voting interest
12 in the association.

13 (33) "Two-thirds vote" means the vote cast through a method permitted
14 by R.S. 9:1141.28 by at least two-thirds of the voting interest present at a duly
15 called meeting of the association.

16 (34) "Unrelated purchaser" means a person who purchases a lot and
17 who is not any of the following:

18 (a) The declarant or an affiliate of the declarant.

19 (b) An individual, trust, or other person that directly or indirectly owns
20 twenty percent or more of the declarant.

21 (c) An immediate family member of a person described in Subparagraph
22 (a) or (b) of this Paragraph.

23 (35) "Vote" means consent, waiver, ballot, or proxy by a method
24 permitted by R.S. 9:1141.28.

25 (36) "Voting interest" or "voting power" means the votes allocated to a
26 lot in the declaration.

27 Revision Comments – 2022

28
29 (a) The actions of the association are intended to follow corporate governance
30 rules, rather than compliance with rules for the imposition of building restrictions in
31 accordance with property law. Matters of routine administration and governance are
32 undertaken by the required vote at a meeting at which a quorum is present. Matters

1 requiring a supermajority vote, such as adding or removing property from the
2 planned community or imposing more burdensome restrictions, are undertaken by
3 a supermajority vote of the total membership of the planned community. The
4 distinction is intentional.

5
6 (b) See R.S. 1:7, which provides that words used in the singular number
7 include the plural.

8
9 (c) In Paragraph (27), housing units owned by spouses, whether pursuant to
10 a community or separate property regime, are considered owned by the same person.

11 §1141.3. Applicability

12 A. The provisions of this Part shall be applicable to existing and future
13 ~~residential~~ planned communities whose declarations have been duly executed and
14 filed for registry. However, this Part shall not be construed to affect the validity or
15 superiority of any provision of a community document **filed for registry prior to**
16 **the effective date of this Act.** ~~Only to the extent the community documents are~~
17 ~~silent shall the provisions of this Part apply.~~

18 B.(1) This Part shall not apply to condominium property governed by the
19 provisions of Part II of this Chapter.

20 (2) The provisions of Part II-A of this Chapter shall be applicable to an
21 ownership timeshare interest created in a lot within a planned community to the
22 extent that those provisions do not conflict with the provisions of this Part.

23 C. This Part shall not impair any right that is guaranteed or protected by the
24 constitution of this state or the United States, nor shall this Part be construed to affect
25 any act done, offense or violation committed, or right accrued.

26 D. This Part shall not be construed to impair or cast a cloud upon the titles
27 of common areas or lots within a ~~residential~~ planned community.

28 ~~SUBPART B. BUILDING RESTRICTIONS~~ **CREATION,**
29 **AMENDMENT, AND TERMINATION**

30 ~~§1141.4. Building restrictions; matters of interpretation~~

31 ~~The existence, validity, or extent of a building restriction affecting any~~
32 ~~association property shall be liberally construed to give effect to its purpose and~~
33 ~~intent.~~

34 ~~§1141.5. Building restrictions; generally, affirmative duty, and common areas~~

1 A. ~~Building restrictions affecting the building standards, specified uses, or~~
2 ~~improvements of association property may be established, amended, or terminated~~
3 ~~in accordance with the provisions of this Part.~~

4 B. ~~Such building restrictions may include the imposition of an affirmative~~
5 ~~duty, including the affirmative duty to pay monthly or periodic dues or fees, or~~
6 ~~assessments for a particular expense or capital improvement, that are reasonable for~~
7 ~~the maintenance, improvement, or safety, or any combination thereof, of the planned~~
8 ~~community.~~

9 C. ~~Such building restrictions may also regulate the building standards,~~
10 ~~specified uses, and improvements of common areas of a homeowners association,~~
11 ~~including but not limited to the regulation of passage, ingress, and egress upon~~
12 ~~common areas, streets, and street rights-of-way.~~

13 §1141.6. Establishment, amendment, or termination of building restrictions

14 A. ~~Building restrictions affecting association property, including lots or~~
15 ~~common areas, or those imposing an affirmative duty may be established, amended,~~
16 ~~or terminated in accordance with the terms of the applicable community document.~~

17 B. ~~In the absence of a provision for the establishment, amendment, or~~
18 ~~termination of such building restrictions in the community documents:~~

19 (1) ~~Building restrictions may be established by agreement of three-fourths of~~
20 ~~the lot owners.~~

21 (2) ~~Existing building restrictions may be made more onerous or increased by~~
22 ~~agreement of two-thirds of the lot owners.~~

23 (3) ~~Existing building restrictions may be made less onerous, reduced, or~~
24 ~~terminated by agreement of more than one-half of the lot owners.~~

25 C. ~~(1) Once established, or amended to be more onerous, building restrictions~~
26 ~~become a charge on the property and affect all current owners and, once recorded in~~
27 ~~the public records, affect all subsequent owners. Except for building restrictions~~
28 ~~relating to assessments or common areas, no new or more onerous building~~
29 ~~restriction shall impose a duty on the current owner to act affirmatively or remove~~

1 ~~or renovate any existing structure. All new or replacement structures, however, shall~~
2 ~~be subject to the new or more onerous building restriction.~~

3 ~~(2) Once amended to be less onerous, the building restriction constitutes a~~
4 ~~reduction of the charge on the property, and once terminated, the property is released~~
5 ~~of its former charge, affecting all current and subsequent owners.~~

6 ~~D.(1) When building restrictions are established under the provisions of~~
7 ~~Subsection B of this Section, rather than by the community documents, an owner~~
8 ~~may file with the association and the clerk of court a statement declining to be~~
9 ~~covered by the building restrictions. Such document must be filed within thirty days~~
10 ~~of the establishment of such building restrictions.~~

11 ~~(2) When building restrictions relative to set-backs or minimum square~~
12 ~~footage requirements are established or made more onerous under the provisions of~~
13 ~~Subsection B of this Section, rather than the community documents, the owner of an~~
14 ~~unimproved lot is exempt from complying with such new or more onerous~~
15 ~~restrictions.~~

16 ~~(3) An "owner" under the provisions of this Subsection means the owner or~~
17 ~~owners at the time the restriction was established or made more onerous and the~~
18 ~~waivers of compliance provided in this Subsection are personal to that owner.~~

19 ~~§1141.7. Agreement of owners; voting~~

20 ~~A. Each lot represents a single vote which can be exercised by the signature~~
21 ~~or other indication of the registered lot owner or of a single co-owner, the latter of~~
22 ~~which is presumed to be acting on behalf of the other co-owners. A plot or parcel of~~
23 ~~unimproved land which is substantially larger than a majority of other lots in the~~
24 ~~association, however, shall be treated as separate lots, the number of which to be~~
25 ~~roughly determined by the size of the land in relation to other lots. The ownership~~
26 ~~interest in common areas, streets, or street rights-of-way does not constitute a voting~~
27 ~~interest.~~

28 ~~B. For purposes of this Subpart, an agreement of lot owners may be obtained~~
29 ~~by any of the following methods, or a combination thereof:~~

1 ~~(1) By a written ballot that states the substance of the issue before the owners~~
2 ~~and specifies the date by which the return ballot must be received to be counted. The~~
3 ~~ballot shall be accompanied by the full text of the building restriction being~~
4 ~~established, amended, or terminated and shall be mailed to the owner by certified~~
5 ~~mail not less than thirty days prior to the date by which the return ballot must be~~
6 ~~received.~~

7 ~~(2) At a meeting of the owners if written notice of the meeting stating the~~
8 ~~purpose of the meeting is delivered to each lot owner. The notice shall be~~
9 ~~accompanied by an agenda of the meeting and the full text of the building restriction~~
10 ~~being established, amended, or terminated. Such notice shall be mailed to the owner,~~
11 ~~by certified mail, not less than thirty days prior to the date of the meeting.~~

12 **§1141.4. Creation, alteration, and termination of a planned community**

13 **A. A planned community is established by the execution of a declaration**
14 **by all owners of the immovable property to be affected or by the lessee in the**
15 **case of a leasehold planned community. The declaration shall be effective when**
16 **filed for registry in the conveyance records of each parish in which any portion**
17 **of the immovable property is situated.**

18 **B. All provisions of the declaration are severable. The effectiveness of the**
19 **declaration is not affected by an insubstantial failure of the declaration to**
20 **comply with this Part.**

21 **C. If a conflict exists between the declaration and any other community**
22 **document, the declaration shall prevail.**

23 **D.(1)(a) The recorder shall index the initial declaration and plat in the**
24 **conveyance records in the names of the declarant, the planned community, each**
25 **owner of the immovable property subject to the declaration, and the association.**

26 **(b) The recorder shall index an amendment to the declaration or the plat**
27 **in the conveyance records in the names of the declarant, the planned**
28 **community, and the association. If an amendment relocates the boundary of a**
29 **lot, incorporates common areas into a lot, adds additional property, or**

1 withdraws a lot from the community, the recorder shall also index the
2 amendment in the name of each owner of each lot affected by the amendment.

3 (c) An indexing error shall not impair the effect of recordation of the
4 document.

5 (2) The grant of a security right by the association shall comply with
6 registry requirements of law, including filings in accordance with the Uniform
7 Commercial Code – Secured Transactions.

8 §1141.5. Contents of the declaration

9 A. The declaration shall contain all of the following:

10 (1) A statement submitting the immovable property to a planned
11 community.

12 (2) The name by which the planned community is to be identified, which
13 shall include the phrase "planned community" or be followed by the words "a
14 planned community".

15 (3) A complete property description of all of the immovable property
16 within the planned community.

17 (4) An identification of each lot by letter, name, or number, or a
18 combination thereof, so that no lot bears the same identification as any other
19 lot.

20 (5) A written description and plat, meeting the requirements of R.S.
21 9:1141.9, delineating the precise boundaries of each lot and designating any
22 common areas and limited common areas appurtenant thereto.

23 (6) The manner of allocating common expense liabilities, common
24 surpluses, and voting interest in the association, in accordance with R.S.
25 9:1141.6.

26 (7) A description of any development right or other special declarant
27 right reserved by the declarant, a complete property description of any
28 immovable property within the planned community to which each right applies,
29 a general schematic map of any immovable property that may be added to the

1 planned community pursuant to a development right, and the term within
2 which the rights may be exercised.

3 (8) All matters required by R.S. 9:1141.6 in the event the declarant
4 reserves the right to change the allocations to lots of common expense liabilities,
5 common surpluses, and voting interest in the association.

6 (9) The name of the association formed in accordance with R.S.
7 9:1141.19.

8 (10) The rights and responsibilities for the maintenance and repair of
9 association property and for the maintenance, repair, and replacement of any
10 improvements thereon.

11 (11) Any building restrictions and servitudes affecting the association
12 property.

13 (12) Identification of lots as intended for residential or nonresidential
14 use.

15 (13) The name of all natural persons who control the declarant, if the
16 declarant is not a natural person.

17 B. The declaration may contain any of the following:

18 (1) The purpose for which the association property is intended.

19 (2) Procedures whereby a lot owner may transfer his lot to the
20 association and thereby release himself from any further obligation for common
21 expense liabilities.

22 (3) The method of amendment of the declaration, subject to the
23 limitations provided in R.S. 9:1141.14.

24 (4) The method for making assessments and the procedure for collecting
25 from the lot owners their respective assessments.

26 C. When additional immovable property is added to the planned
27 community, an amendment to the declaration shall be executed and filed for
28 registry and indexed in accordance with R.S. 9:1141.4(D). The amendment shall
29 be effective when filed for registry in the conveyance records of the parish in

1 which the additional immovable property is situated.

2 D. The community documents of a planned community restricted to a
3 residential use shall not:

4 (a) Reduce the voting interest required in R.S. 9:1141.14.

5 (b) Vary any requirement, procedure, or other provision of this Part
6 pertaining to the mandatory requirements of the declaration in accordance with
7 this Section or the provisions of Subpart D of this Part.

8 §1141.6. Allocation of common expense liabilities, common surpluses, and
9 voting interest in the association

10 A. The declaration shall allocate to each lot a fraction or percentage of
11 the common expense liabilities, common surpluses, and voting interest in the
12 association and shall state the formulas or methods used to establish the
13 allocations.

14 B. If lots may be added to or withdrawn from the planned community
15 or if boundaries between adjoining lots may be relocated, the declaration shall
16 state the formulas or methods to be used to reallocate the common expense
17 liabilities, common surpluses, and voting interest in the association among all
18 lots included in the planned community after the addition, withdrawal, or
19 relocation.

20 C.(1) The declaration may provide for the following:

21 (a) Different allocations to lots of voting interest on particular matters
22 specified in the declaration.

23 (b) Cumulative voting only for electing directors.

24 (c) Class voting on specified issues affecting the class if necessary to
25 protect valid interests of the class.

26 (2) A declarant may not utilize cumulative or class voting to avoid any
27 limitation imposed on declarants by this Part, nor may lots constitute a class
28 because they are owned by a declarant.

29 D. Except for minor variations due to rounding, the sum of the common

1 expense liabilities, common surpluses, or voting interest in the association
2 allocated at any time to all of the lots shall equal one if stated as a fraction or
3 one hundred percent if stated as a percentage.

4 E. The transfer, encumbrance, judicial sale, or other voluntary or
5 involuntary transfer of an ownership interest in a lot includes membership in
6 the association and any other rights in the association appurtenant to that lot.

7 §1141.7. Exercise of development rights

8 A. To exercise any development right reserved in R.S. 9:1141.5(A)(7), the
9 declarant shall prepare, execute, and file for registry an amendment to the
10 declaration in accordance with R.S. 9:1141.4(D). The amendment to the
11 declaration shall assign an identifying number to each new lot created, and,
12 except in the case of subdivision or conversion of lots described in Subsection
13 D of this Section, reallocate the common expense liabilities, common surpluses,
14 and voting interest in the association among all lots. The amendment shall
15 describe any common areas and any limited common areas created and, in the
16 case of limited common areas, designate the lots by letter, name, or number, or
17 a combination thereof to which each is appurtenant.

18 B. Development rights may be reserved within any immovable property
19 added to the planned community if the amendment adding that immovable
20 property includes or incorporates by reference all matters required by R.S.
21 9:1141.5.

22 C. Development rights to add additional immovable property may be
23 exercised only within seven years after the date of the filing of the initial
24 declaration. The submission of an application for approval of a plat of
25 subdivision pursuant to R.S. 33:113 shall suspend the running of the seven-year
26 period, except that the suspension is considered never to have occurred if the
27 application is denied and any appeal period has expired, or if the developer
28 voluntarily withdraws or abandons the application or a plat of subdivision that
29 is the subject of the application prior to filing the plat for registry. If a plat is

1 approved, the seven-year period shall be interrupted and shall commence to run
2 anew on the date on which the plat of subdivision is filed for registry. This
3 Section does not extend the term for the exercise of development rights imposed
4 by the declaration pursuant to R.S. 9:1141.5(A)(7).

5 D. When a declarant exercises a development right to subdivide or
6 convert a lot previously created into additional lots, common areas, limited
7 common areas, or any combination thereof, the following apply:

8 (1) If the declarant converts the lot entirely to a common area or limited
9 common area, the amendment to the declaration shall reallocate all of the
10 common expense liabilities, common surpluses, and voting interest in the
11 association of that lot among the other lots by the same method provided in R.S.
12 9:1141.6, or as otherwise provided in the community documents.

13 (2) If the declarant subdivides the lot into two or more lots or if the
14 declarant combines two or more lots into a single lot, regardless of whether any
15 part of the lot is converted into a common area or a limited common area, the
16 amendment to the declaration shall reallocate all of the common expense
17 liabilities, common surpluses, and voting interest in the association of the lot
18 among the lots created by the subdivision in the manner prescribed in the
19 declaration.

20 E. If, pursuant to R.S. 9:1141.5(A)(7), the declaration provides that all
21 or any portion of the immovable property within the planned community is
22 subject to a right of withdrawal by the declarant, none of the immovable
23 property may be withdrawn after a lot has been transferred to an unrelated
24 purchaser except upon a supermajority vote of the association. A declarant may
25 not withdraw all or any portion of immovable property that has been
26 transferred to the association.

27 Revision Comments – 2022

28
29 If the association owns the immovable property sought to be withdrawn, R.S.
30 9:1141.15 applies.

31 §1141.8. Limited common areas

1 **A. The declaration shall specify to which lot each limited common area**
2 **is allocated. An allocation may not be altered without the consent of all of the**
3 **lot owners whose lots are directly affected.**

4 **B. A limited common area may be reallocated upon request to the board**
5 **of directors by all of the lot owners between or among whose lots the**
6 **reallocation is to be made. When a request is made, an amendment to the**
7 **declaration containing the name of the requesting lot owners shall be executed**
8 **by an authorized officer or agent of the association and shall be filed for registry**
9 **in accordance with R.S. 9:1141.4(D). Any expenses incurred by the association**
10 **in accordance with this Section shall be borne by the requesting lot owners.**

11 **§1141.9. Plats**

12 **A. Each plat shall be clear and legible and shall show all of the following:**

13 **(1) The name and a survey of the entire planned community, including**
14 **the designation of all lots, commons areas, and limited common areas.**

15 **(2) The extent of any encroachments by or upon any portion of the**
16 **planned community.**

17 **(3) A depiction of all servitudes benefiting or burdening any portion of**
18 **the planned community, to the extent plottable.**

19 **(4) In the case of a leasehold planned community, a complete property**
20 **description of all immovable property subject to a lease.**

21 **(5) The distance between noncontiguous parcels of immovable property**
22 **comprising the planned community.**

23 **(6) All other matters required by R.S. 33:5051.**

24 **B. Upon exercising any development right to add immovable property**
25 **to the planned community, the declarant shall file for registry, in accordance**
26 **with R.S. 9:1141.4(D), a new plat of the additional immovable property**
27 **conforming to the requirements of Subsection A of this Section.**

28 **C. The ownership interest of the declarant in the common areas and**
29 **limited common areas is transferred to the association when the declaration and**

1 plat have been filed for registry and the incorporation of the association has
2 occurred.

3 **D. Each plat shall be made by a professional land surveyor.**

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6 Upon the filing of the declaration and plat and the incorporation of the
7 association, the transfer of ownership of the common areas occurs by operation of
8 law without the necessity of filing a separate act translative of ownership in the
9 public records. The rules set forth in Subpart D of this Part determine the transferor's
10 warranties of ownership and condition of the common areas.

11 **§1141.10. Relocation of lot boundaries**

12 **A. The boundaries between adjoining lots may be relocated upon the**
13 **request of the lot owners of the affected lots if the relocation does not alter the**
14 **size of a lot by more than ten percent.**

15 **B. Boundaries between lots and common areas may be relocated to**
16 **incorporate common areas into a lot upon the request of the affected lot owner**
17 **and with the approval of a supermajority vote.**

18 **C. Upon the request and approval as provided in Subsections A and B**
19 **of this Section, an amendment to the declaration shall be executed by an**
20 **authorized officer or agent of the association and filed for registry in**
21 **accordance with R.S. 9:1141.4(D). In addition, the requesting lot owners and**
22 **officer or agent of the association shall execute an act translative of ownership,**
23 **and if applicable, an amended plat. Any expenses incurred by the association**
24 **in accordance with this Section shall be borne by the requesting lot owners.**

25 **§1141.11. Subdivision of lots**

26 **A. A lot may be subdivided into two or more lots upon the request of the**
27 **lot owner and with the approval of a supermajority vote.**

28 **B. Upon approval of the subdivision, an amendment to the declaration**
29 **shall include the plat subdividing that lot; assign an identifying letter, name, or**
30 **number to each lot created; and reallocate to each lot created, in any reasonable**
31 **manner prescribed by the association or on any other basis the declaration**
32 **requires, the common expense liabilities, common surpluses, and voting interest**

1 in the association formerly allocated to the subdivided lot.

2 C. The amendment to the declaration shall be executed by an authorized
3 officer or agent of the association and filed for registry in accordance with R.S.
4 9:1141.4(D). Any expenses incurred by the association in accordance with this
5 Section shall be borne by the requesting lot owner.

6 §1141.12. Use for sales purposes

7 Subject to other provisions of law and local ordinances, a declarant may
8 maintain sales offices, management offices, and models on lots that the
9 declarant owns and may erect signs advertising the planned community on the
10 common areas.

11 §1141.13. Servitude and use rights

12 A. A declarant has a personal servitude of right of use on and through
13 the common areas as may be reasonably necessary for the purpose of
14 discharging obligations or exercising special declarant rights, whether in
15 accordance with this Part or reserved in the declaration.

16 B. Lot owners have a right to use, for the purposes for which they were
17 intended, all common areas and all immovable property that shall become
18 common areas, other than limited common areas.

19 §1141.14. Amendment to declaration

20 A. Except as otherwise provided in this Section or R.S. 9:1141.7, the
21 declaration may be amended only by the vote requirement provided in the
22 declaration. If a voting requirement to amend the declaration is not provided
23 in the declaration, it may be amended by a two-thirds vote. If any lots in the
24 planned community are used for residential purposes, the declaration may not
25 provide for amendment by less than a two-thirds vote.

26 B. No amendment to the declaration may create or increase special
27 declarant rights; increase the number of lots; change the allocation of common
28 expense liabilities, common surpluses, or voting interest in the association for
29 a lot; extend the time limitations specified in R.S. 9:1141.7(C); or create

1 additional development rights without the approval of the association by a
2 supermajority vote.

3 C.(1) The declaration may be amended only by a supermajority vote, or
4 such greater vote required by the community documents, to do any of the
5 following:

6 (a) Prohibit or materially restrict the uses of a lot or the number or other
7 qualifications of persons who may occupy a lot.

8 (b) Impose more burdensome restrictions.

9 (2) An existing occupancy or use of a lot shall not be prohibited by an
10 amendment to the community documents if that occupancy or use has
11 commenced prior to the filing of the amendment for registry, except as provided
12 in Paragraph (3) of this Subsection.

13 (3) If an existing occupancy or use has ceased for twelve consecutive
14 months after the date the amendment is filed for registry, and the period is not
15 extended as provided in Paragraph (4) of this Subsection, the lot shall become
16 subject to the prohibition on the existing occupancy or use contained in the
17 amended declaration.

18 (4) A lot owner may submit a request to the board of directors to extend
19 the time period in Paragraph (3) of this Subsection when an existing occupancy
20 or use is discontinued due to a fortuitous event. The board of directors shall
21 grant or deny the request using reasonable discretion.

22 (5) A use restriction establishing or increasing the minimum term for the
23 lease of a lot or prohibiting the rental of less than the entirety of the lot shall be
24 considered a more burdensome restriction.

25 (6) Unless a greater percentage is required in the community documents,
26 an association may adopt by supermajority vote more burdensome restrictions
27 governing construction, design criteria, and aesthetic standards, subject to the
28 following limitations:

29 (a) No new restriction shall impose a duty on a lot owner to act

1 affirmatively or remove or renovate any existing structure.

2 (b) Only exterior renovations or reconstructions that increase the value
3 of the improvements on the lot by more than forty percent are required to
4 comply with the more burdensome construction and design criteria standards.
5 The lot owner shall submit to the association, prior to the start of construction,
6 an estimate of the value of the improvements as determined by a qualified
7 appraiser.

8 D. A provision in the declaration modifying special declarant rights that
9 have not expired shall not be amended without the consent of the declarant.

10 E. If any provision of the declaration requires the consent of a holder of
11 a security right in a lot as a condition to the effectiveness of an amendment to
12 the declaration, and the declaration does not otherwise provide the method for
13 obtaining consent, consent is deemed granted if a record refusing consent is not
14 received by the association within sixty days after the association delivers notice
15 of the proposed amendment to the holder of the security right at an address for
16 notice provided by the holder. If the holder has not provided to the association
17 an address for notice, the association shall provide notice to the address of the
18 holder stated in the recorded security right.

19 F. Amendments to the declaration adopted pursuant to this Section shall
20 be prepared, executed, and filed for registry on behalf of the association by an
21 authorized officer or agent of the association in accordance with R.S.
22 9:1141.4(D). Any amendment shall contain a certification that the minimum
23 voting requirements have been met.

24 G. An action to challenge the validity of an amendment adopted in
25 accordance with this Section shall be brought within a preemptive period of one
26 year from the date the amendment is filed for registry.

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29 This Act seeks to protect purchasers who acquired a lot in reliance on the
30 community documents in effect at the time of acquisition of the lot, provided an
31 active use has been made of the lot. A lot purchaser is required to comply with
32 amendments to the community documents if an active use has not commenced, or

1 if a previously active use has ceased for twelve months, subject to the rules of
2 fortuitous events.

3 **§1141.15. Termination of the planned community**

4 **A. A planned community may be terminated only by a supermajority**
5 **vote, or any greater percentage that the declaration specifies, and with any**
6 **other approvals required by the declaration. The declaration may provide for**
7 **termination with less than a supermajority vote if all of the lots are restricted**
8 **exclusively to nonresidential uses.**

9 **B. A termination agreement shall be prepared and executed on behalf of**
10 **the association by an authorized officer or agent of the association and filed for**
11 **registry in accordance with R.S. 9:1141.4(D). A termination agreement shall**
12 **contain a certification that the minimum voting requirements have been met.**

13 **C. If a termination agreement provides for the transfer of ownership of**
14 **all or a portion of the common areas and limited common areas, the association,**
15 **on behalf of the lot owners, may contract for the transfer of ownership of**
16 **common areas and limited common areas, but the contract is not binding on the**
17 **lot owners until the termination agreement is approved and filed for registry**
18 **pursuant to this Section. As long as the association owns the common areas and**
19 **limited common areas, the lot owners and their successors continue to have the**
20 **right to use and enjoy the areas in accordance with their intended purpose and**
21 **remain liable for all assessments and other obligations imposed on lot owners**
22 **by this Part or the declaration.**

23 **D. The existence of the association is not affected by the termination**
24 **agreement. Until the common areas and limited common areas within the**
25 **planned community are transferred following termination, ownership of the**
26 **common areas and limited common areas remains with the association.**

27 **E. Following termination of the planned community, the proceeds from**
28 **any transfers of ownership of common areas, limited common areas, and other**
29 **property of the association shall be paid to the association for the benefit of the**
30 **lot owners and holders of security rights in the property, as their interests may**

1 **appear. Proceeds available to lot owners and holders of security rights in lots**
 2 **shall be distributed in accordance with R.S. 9:1141.6.**

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4
 5 (a) Termination of a planned community requires the support of at least a
 6 supermajority of the votes in the association, or such greater percentage as the
 7 community documents may require. The community documents may specify a lower
 8 percentage to terminate a planned community that consists exclusively of
 9 nonresidential lots.

10
 11 (b) Title to common areas is vested in the association. The association is a
 12 separate legal entity. The termination of the planned community does not serve to
 13 terminate the association. Rather, the association is terminated and liquidated in
 14 accordance with the Nonprofit Corporation Law, R.S. 12:201 et seq.

15
 16 (c) This Section is intended to apply to a complete termination of a planned
 17 community. A termination affecting only a portion of the community is governed by
 18 the rules applicable to the withdrawal of a lot or common area. See R.S. 9:1141.6,
 19 1141.7, and 1141.29.

20 **§1141.16. Rights of secured parties**

21 **A. The declaration may require that specified actions of the lot owners**
 22 **or the association shall be approved by creditors who hold security rights in the**
 23 **lots or who have extended credit to the association, but no requirement for**
 24 **approval may operate to do any of the following:**

25 **(1) Deny or delegate control over the general administrative affairs of the**
 26 **association by the lot owners or the board of directors.**

27 **(2) Control the establishment or imposition of assessments except as**
 28 **provided in Subsection C of this Section.**

29 **(3) Prevent the association or the board of directors from commencing,**
 30 **intervening in, or settling any litigation or proceeding.**

31 **(4) Prevent the association from receiving and distributing any insurance**
 32 **proceeds to make necessary repairs as a result of a casualty.**

33 **B. A lender who has extended credit to an association secured by a**
 34 **security right to the income of the association or a security right in the common**
 35 **areas or limited common areas may enforce the security right in accordance**
 36 **with its terms, subject to the requirements of this Part or other provisions of**
 37 **law. Requirements that the association deposit with the lender the association's**

1 periodic income in which the lender holds a security right do not violate
2 Subsection A of this Section.

3 C. If approved by an association in accordance with R.S. 9:1141.28, the
4 holder of a security right may require that assessments shall not be decreased
5 without its approval.

6 §1141.17. Master associations

7 A. If any of the powers in R.S. 9:1141.20 are to be exercised by or
8 delegated to a corporation that exercises powers on behalf of planned
9 communities or for the benefit of the lot owners, all provisions of this Part
10 applicable to lot owners' associations shall apply to the corporation, except as
11 provided by this Section.

12 B. Unless it is acting in the capacity of an association as provided in R.S.
13 9:1141.19, a master association may exercise the powers provided in R.S.
14 9:1141.20(A)(2) only to the extent expressly permitted in the declaration of the
15 planned community that is part of the master association or expressly described
16 in the delegation of power to the master association.

17 C. If the declaration of any planned community provides that the board
18 of directors may delegate powers to a master association, the directors have no
19 liability for the acts or omissions of the master association following delegation.

20 D. The rights and responsibilities of lot owners with respect to the
21 association as provided in R.S. 9:1141.21, 1141.26, 1141.27, 1141.28, and 1141.29
22 apply in the conduct of the affairs of a master association only to those persons
23 who elect the board of a master association, regardless of whether those persons
24 are otherwise lot owners.

25 E. Even if a master association is also an association as provided in R.S.
26 9:1141.19, the articles of incorporation or other instrument creating the master
27 association and the declaration of each planned community, the powers of
28 which are assigned by the declaration or delegated to the master association,
29 shall provide that the board of directors of the master association shall be

1 elected after the period of declarant control in any of the following ways:

2 (1) All lot owners of each planned community subject to the master
3 association may elect all directors of the master association.

4 (2) All directors of each planned community subject to the master
5 association may elect all directors of the master association.

6 (3) All lot owners of each planned community subject to the master
7 association may elect specified directors of the master association.

8 (4) All directors of each planned community subject to the master
9 association may elect specified directors of the master association.

10 §1141.18. Combining planned communities

11 A. Any two or more planned communities may be combined into a single
12 planned community upon approval by the lot owners in each planned
13 community by the same vote required to terminate that planned community. If
14 the planned communities to be combined are managed by more than one
15 association, the associations shall be combined into one association in
16 accordance with the applicable provisions of law.

17 B. The agreement to combine shall not be effective until it is filed for
18 registry in accordance with R.S. 9:1141.4(D) in every parish in which a portion
19 of the combined planned community is situated and, if associations are
20 combining, until the articles of merger or consolidation of the associations are
21 filed with the secretary of state.

22 C. Every agreement to combine shall provide for the reallocation of
23 common expense liabilities, common surpluses, and voting interest to each lot
24 by either stating the reallocations or the formulas upon which they are based
25 or stating the percentage allocated to all of the lots comprising each of the
26 preexisting planned communities.

27 SUBPART C. ENFORCEMENT MANAGEMENT OF THE

28 PLANNED COMMUNITY

29 §1141.8. Community documents; force of law

1 ~~The community documents of residential planned communities shall have the~~
2 ~~force of law between the homeowners association and the individual lot owners and~~
3 ~~as between individual lot owners. The remedies for breach of any obligation imposed~~
4 ~~on lot owners or the association shall include damages, injunctions, or such other~~
5 ~~remedies as are provided by law.~~

6 ~~§1141.9. Homeowners association privilege~~

7 ~~In addition to any other remedies provided by law or by the community~~
8 ~~documents for nonpayment of assessments, a homeowners association as defined in~~
9 ~~this Part may utilize the provisions of Part III of this Chapter establishing a privilege~~
10 ~~on lots of delinquent owners for nonpayment of assessments.~~

11 **§1141.19. Organization of lot owners association**

12 **A lot owners association shall be organized as a nonprofit corporation**
13 **authorized to do business in Louisiana. The membership of the association at**
14 **all times consists exclusively of all lot owners or, following termination of the**
15 **planned community, of all former lot owners entitled to distributions of**
16 **proceeds in accordance with R.S. 9:1141.15 or their heirs, successors, or assigns.**
17 **The association shall have a board of directors. The association shall be formed**
18 **prior to filing the declaration for registry.**

19 **§1141.20. Powers and duties of the lot owners association**

20 **A. Except as otherwise provided in this Part, the association:**

21 **(1) Shall adopt and may amend bylaws and may adopt and amend rules.**

22 **(2) Shall adopt and may amend budgets as provided in R.S. 9:1141.34,**
23 **may collect assessments for common expenses from lot owners, and may invest**
24 **funds of the association.**

25 **(3) May hire and discharge managing agents and other employees,**
26 **agents, and independent contractors.**

27 **(4) May institute, defend, or intervene in litigation or in arbitration,**
28 **mediation, or administrative proceedings in its own name on behalf of itself or**
29 **any lot owner or occupant on matters affecting the common interest of the**

1 planned community.

2 (5) May enter into contracts and incur liabilities.

3 (6) May regulate the use, maintenance, repair, replacement, and
4 modification of common areas.

5 (7) May cause additional improvements to be made as a part of the
6 common areas.

7 (8) May acquire, hold, encumber, and transfer in its own name any right,
8 title, or interest to immovable and movable property, whether corporeal or
9 incorporeal, but common areas may be transferred or subjected to a security
10 right only pursuant to R.S. 9:1141.29.

11 (9) May grant servitudes, leases, and licenses through or over the
12 common areas.

13 (10) May impose and receive any payments, fees, or charges for the use,
14 rental, or operation of the common areas and for services provided to lot
15 owners or occupants.

16 (11) May impose charges, including interest and attorney fees, against
17 lot owners for late payment of assessments.

18 (12) May impose reasonable fines, including interest and attorney fees,
19 against lot owners and occupants for violations of the community documents.

20 (13) May impose reasonable charges, including interest and attorney
21 fees, for the preparation and recordation of amendments to the declaration or
22 statements of privilege.

23 (14) May provide for the indemnification of its officers and board of
24 directors and maintain directors and officers liability insurance.

25 (15) May exercise any other powers conferred by the community
26 documents.

27 (16) May exercise any other powers that may be exercised by
28 organizations of the same type.

29 (17) In addition to the rights of the association provided in R.S.

1 9:1141.32, may suspend any right or privilege of a lot owner or occupant who
2 fails to pay an assessment or who violates any provision of the community
3 documents, provided that the association shall not do either of the following:

4 (a) Deny a lot owner access to the lot owner's lot.

5 (b) Withhold services provided by the association to a lot, a lot owner,
6 or an occupant if the effect of withholding the service would endanger the
7 health, safety, or property of any person.

8 B. An association may require that an occupant execute and file with the
9 association a lease or other occupancy agreement containing mandatory
10 language for the benefit of the association. Any occupant who fails to comply
11 with the provisions of this Subsection may be denied access to a lot.

12 C. If an occupant violates the provisions of the community documents,
13 the association may, in addition to exercising any of its powers against the lot
14 owner, enforce against the occupant mandatory provisions contained in the
15 lease or other occupancy agreement.

16 D. The association may determine whether to take enforcement action
17 by imposing sanctions or commencing an action for a violation of the provisions
18 of the community documents, including whether to compromise any claim for
19 unpaid assessments or other claim made by or against the association or to seek
20 eviction.

21 E. The decision of the association in taking enforcement action in
22 accordance with Subsection D of this Section shall not be arbitrary or
23 capricious.

24 F. The board of directors shall establish a reasonable method for lot
25 owners and occupants to communicate, which may include by electronic
26 transmission, with the board of directors on matters concerning the association.

27 G. In the event that the community documents fail to provide for a
28 certain action or procedure, the general provisions of this Part and of the
29 Nonprofit Corporation Law, R.S. 12:201 et seq., shall govern.

1 **§1141.21. Board of directors and officers**

2 **A. Directors of the board of directors and officers of the association shall**
3 **exercise the degree of care and loyalty required of a director or officer and are**
4 **subject to the conflict of interest rules and limitations of liability governing**
5 **directors and officers in accordance with the Nonprofit Corporation Law, R.S.**
6 **12:201 et seq. Nevertheless, no director or officer shall be liable to the**
7 **association or its members for money damages for any action taken, or any**
8 **failure to act, as a director or officer, except as provided in R.S. 9:2792.7 or as**
9 **otherwise provided by law.**

10 **B. The protection against liability of a director or officer for conduct**
11 **described in Subsection A of this Section may be modified in the community**
12 **documents. The association may purchase insurance against liability as**
13 **provided in R.S. 12:1-857.**

14 **C. The board of directors shall not do any of the following:**

15 **(1) Amend the declaration.**

16 **(2) Amend the bylaws.**

17 **(3) Terminate the planned community.**

18 **(4) Elect directors, but the board of directors may fill vacancies in its**
19 **membership for the unexpired portion of any term or, if earlier, until the next**
20 **regularly scheduled election of directors.**

21 **(5) Determine the qualifications, powers, duties, or terms of office of**
22 **directors.**

23 **D. The board of directors shall propose a budget to be approved in**
24 **accordance with R.S. 9:1141.34.**

25 **§1141.22. Declarant control of the association**

26 **A. The declaration may provide for a period of declarant control of the**
27 **association, during which a declarant, or persons designated by the declarant,**
28 **may appoint and remove the officers and directors. A declarant may voluntarily**
29 **surrender the right to appoint and remove officers and directors before the**

1 period ends. In that event, the declarant may require, during the remainder of
2 the period, that specified actions of the association or board of directors as
3 described in a recorded instrument executed by the declarant be approved by
4 the declarant before becoming effective.

5 B. Regardless of the period provided in the declaration, a period of
6 declarant control terminates as follows:

7 (1) If the right to add additional immovable property to the planned
8 community was not reserved in the declaration, one hundred twenty days after
9 the date that seventy-five percent of the total number of lots in the planned
10 community are transferred to lot owners other than the declarant or an affiliate
11 of the declarant.

12 (2) If the right to add additional immovable property to the planned
13 community was reserved in the declaration, upon the expiration of the time
14 period provided in R.S. 9:1141.7(C), as that period may be extended by the
15 declarant's timely exercise of the right to add additional immovable property.

16 C. The board of directors shall consist of at least three persons, each of
17 whom shall be a lot owner or a representative of a lot owner that is a juridical
18 person. Except as otherwise provided in R.S. 9:1141.17(E), a special meeting of
19 the association shall be held for the purpose of electing the board of directors
20 at least thirty days prior to the termination of the period of declarant control.
21 The meeting notice shall be given, in accordance with R.S. 9:1141.38, no more
22 than sixty days and no fewer than thirty days before the date of the meeting. If
23 a quorum is not present at the meeting, then it may be adjourned and
24 reconvened by the association the next day, at which time those lot owners who
25 are present shall constitute a quorum for purposes of electing the board of
26 directors. Unless the community documents provide for the election of officers
27 by the lot owners, the board of directors shall be entitled to elect the officers.
28 The directors and officers shall take office upon the termination of the period
29 of declarant control.

1 **D. Notwithstanding the provisions of this Section, in no event shall the**
2 **period of declarant control of a master association terminate until all periods**
3 **of declarant control for all planned communities subject to the master**
4 **association have terminated.**

5 **§1141.23. Transfer of special declarant rights**

6 **A. Special declarant rights may be transferred only by an instrument**
7 **evidencing the transfer recorded in every parish in which any portion of the**
8 **planned community is situated. Upon transfer of special declarant rights, the**
9 **transferor is not relieved of any obligation or liability arising before the**
10 **transfer. A transferor has no liability for any act or omission of, or any breach**
11 **of a contractual obligation arising from the exercise of a special declarant right**
12 **by, a successor declarant.**

13 **B. In the event of partial transfer of special declarant rights, those**
14 **special declarant rights not transferred terminate on the effective date of the**
15 **transfer. The transferee of partial rights is only responsible for those obligations**
16 **related to the special declarant rights that were transferred.**

17 **C. A person who succeeds to special declarant rights is subject to the**
18 **obligations and liabilities imposed by this Part or the community documents**
19 **with respect to those special declarant rights transferred, except for any of the**
20 **following:**

21 **(1) Misrepresentations by a previous declarant.**

22 **(2) Breach of any fiduciary obligation owed to the board of directors by**
23 **a previous declarant or his appointees.**

24 **(3) Any liability or obligation imposed on the transferor as a result of his**
25 **acts or omissions after the transfer.**

26 **D. Nothing in this Section subjects any successor to a special declarant**
27 **right to any claims against or other obligations of a transferor declarant, other**
28 **than claims and obligations in accordance with this Part or the community**
29 **documents.**

1 **§1141.24. Termination of contracts**

2 **A. During the first two years after the board of directors elected by the**
3 **lot owners pursuant to R.S. 9:1141.22(C) takes office, the following contracts**
4 **entered into by the association may be terminated without penalty, provided**
5 **that at least ninety days' notice is given to the other party and the contract was**
6 **entered into before the board of directors took office:**

7 **(1) Any management, maintenance, or employment contract.**

8 **(2) Any other contract with the declarant or an affiliate of the declarant**
9 **that is unconscionable to the lot owners at the time the contract was entered**
10 **into.**

11 **B. The provisions of this Section do not apply to a lease that, if**
12 **terminated, would terminate the planned community or reduce its size.**

13 **C. Nothing in this Section shall impair the ability of the association to**
14 **rescind or annul a contract in accordance with other provisions of law.**

15 **§1141.25. Bylaws**

16 **A. The bylaws of the association shall provide for all of the following:**

17 **(1) The number of directors, which shall be no fewer than three.**

18 **(2) The method of electing a president, treasurer, secretary, and any**
19 **other officers specified.**

20 **(3) The qualifications, powers and duties, terms of office, and manner of**
21 **electing and removing directors and officers and filling vacancies.**

22 **(4) The powers that the board of directors or officers may delegate to**
23 **other persons or to a managing agent.**

24 **(5) The officers who may prepare, execute, certify, and record**
25 **amendments to the community documents on behalf of the association.**

26 **(6) Any provision necessary to satisfy requirements in this Part or the**
27 **community documents concerning meetings, voting, quorums, and other**
28 **activities of the association.**

29 **B. The bylaws may provide for any other necessary or appropriate**

1 matters, including matters that may be adopted as rules, relative to managing
2 the business and regulating the affairs of the association and the planned
3 community.

4 §1141.26. Meetings

5 A. The following requirements apply to association meetings:

6 (1) The association shall hold an annual meeting in accordance with the
7 bylaws. In the absence of a provision in the bylaws, an annual meeting shall be
8 held upon the giving of not more than sixty days' nor fewer than ten days' notice
9 in accordance with R.S. 9:1141.38.

10 (2) The association shall hold a special meeting to address any matter
11 affecting the planned community or the association if its president, a majority
12 of the board of directors, or lot owners having at least twenty percent, or any
13 lower percentage specified in the bylaws, of the voting interest in the association
14 demand that the secretary call a meeting. The secretary shall call the meeting
15 within thirty days after receiving notice of the lot owners' demand. Only
16 matters described in the meeting notice required by Paragraph (3) of this
17 Subsection shall be considered at a special meeting.

18 (3) The association shall notify lot owners of the time, date, and place of
19 each annual and special meeting not more than sixty days nor fewer than ten
20 days before the meeting date. Notice may be given by any means provided in
21 R.S. 9:1141.38. The notice shall state the items on the agenda, including the
22 following:

23 (a) The general nature of any proposed amendment to the community
24 documents.

25 (b) Any budget changes.

26 (c) Any proposal to remove a director or an officer elected by the
27 association.

28 (4) The minimum amount of time in which notice shall be given in
29 accordance with Paragraph (3) of this Subsection may be reduced or waived by

1 the board of directors for a meeting called to address an emergency.

2 (5) At the meeting, lot owners shall be given a reasonable opportunity to
3 comment regarding any matter affecting the planned community or the
4 association.

5 (6) The community documents may allow for meetings of the association
6 to be conducted by telephonic, video, or other conferencing process, if the
7 meeting notice states the conferencing process to be used.

8 (7) Meetings of the association shall take place at the planned community
9 or at a place convenient to it.

10 (8) Except as otherwise provided in the community documents, all
11 meetings of the association shall be conducted in accordance with the most
12 recent edition of Robert's Rules of Order.

13 B. The following requirements apply to meetings of the board of
14 directors and committees of the association authorized to act for the association:

15 (1) Meetings shall be open to the lot owners except during executive
16 sessions. The board of directors and committees may hold an executive session
17 only during a regular or special meeting of the board or committee. No final
18 vote or action shall be taken during an executive session. An executive session
19 shall be held only to do the following:

20 (a) Consult with an attorney concerning legal matters.

21 (b) Discuss existing or potential litigation, mediation, arbitration, or
22 administrative proceedings.

23 (c) Discuss labor or personnel matters.

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

28 (e) Prevent public knowledge of a matter if the board of directors or
29 committee determines that public knowledge would violate the privacy of any

1 person.

2 (2) For purposes of this Section, a gathering of the board of directors at
3 which the directors do not conduct association business is not a meeting of the
4 board. The board of directors may not use incidental or social gatherings or any
5 other method to evade the open meeting requirements of this Section.

6 (3) During the period of declarant control, the board of directors shall
7 meet at least two times per year. At least one of those meetings shall be held at
8 the planned community or at a place convenient to it.

9 (4) The board of directors shall establish procedural rules to permit
10 participation by a lot owner in the event that the lot owner is directly impacted
11 by an agenda item or is requested to attend by the board of directors.

12 (5) Unless the meeting is included in a schedule previously provided to
13 the lot owners or the meeting is called to address an emergency, the secretary
14 or other officer specified in the bylaws shall give notice of each board of
15 directors meeting to each director and to the lot owners. The notice shall be
16 given at least ten days before the meeting and shall state the time, date, place,
17 and agenda of the meeting.

18 (6) If any materials are distributed to the board of directors before the
19 meeting, copies of those materials shall be reasonably available to lot owners,
20 including by posting on the association's website, except that the board need not
21 make available copies of unapproved minutes or materials that are to be
22 considered in executive session.

23 (7) The board of directors may meet by telephonic, video, or other
24 conferencing process if the meeting notice states the conferencing process to be
25 used.

26 (8) Except as provided in Paragraph (3) of this Subsection, in lieu of
27 meeting, the board of directors may act by unanimous consent as documented
28 in a record signed by all directors. The secretary shall promptly give notice to
29 all lot owners of any action taken by unanimous consent. After termination of

1 the period of declarant control, the board of directors may act by unanimous
2 consent only to undertake ministerial actions or to implement actions previously
3 taken at a board meeting.

4 (9) All actions taken by the board of directors that do not comply with
5 this Section are nevertheless deemed valid unless and until set aside by a court.
6 A challenge to the validity of an action of the board of directors for failure to
7 comply with this Section shall not be brought more than sixty days after the
8 minutes of the meeting at which the action was taken are approved or notice of
9 that action is provided to lot owners, whichever is later.

10 (10) Except as otherwise provided in the community documents, all
11 meetings of the board of directors and the committees of the association shall
12 be conducted in accordance with the most recent edition of Robert's Rules of
13 Order.

14 §1141.27. Quorum

15 A. Unless the bylaws provide otherwise, a quorum is present throughout
16 any meeting of the association if lot owners holding twenty percent of the voting
17 interest in the association are present in person or by proxy at the beginning of
18 the meeting, have cast absentee ballots that were solicited in accordance with
19 R.S. 9:1141.28(D)(3) and delivered to the secretary in a timely manner, or are
20 present by any combination thereof.

21 B. Voting interest allocated to lots owned by the association shall be
22 counted toward a quorum.

23 C. Unless this Part or the community documents specify a greater
24 number, a quorum of the board of directors is present for purposes of
25 determining the validity of any action taken at a meeting if individuals entitled
26 to cast a majority of the votes on that board are present at the time a vote
27 regarding that action is taken. If a quorum is present when a vote is taken, the
28 affirmative vote of a majority of the directors present is the act of the board of
29 directors unless a greater vote is required by this Part or the community

1 documents.

2 §1141.28. Voting; proxies; ballots

3 A. Directors may not vote by proxy at any meeting of the board of
4 directors or at any committee thereof.

5 B. Lot owners may vote at a meeting of the association in person, by
6 absentee ballot, by proxy or, when a vote is conducted without a meeting, by
7 electronic transmission or paper ballot.

8 C. The voting interest allocated to lots owned by the association shall be
9 cast in the same proportion as the votes cast on the matter by lot owners other
10 than the association.

11 D. At a meeting of the association at which a quorum is present, the
12 following requirements apply:

13 (1) Lot owners who are present may cast a vote in person by voice, show
14 of hands, standing, or any other method for determining votes, as designated by
15 the association.

16 (2) Unless a greater number of the votes in the association is required,
17 a majority of the voting interest cast is required for the approval of any action
18 of the association.

19 (3) A lot owner may vote by absentee ballot without being present at the
20 meeting. The association shall promptly deliver an absentee ballot to a lot owner
21 upon request made at least three days before the scheduled meeting.

22 (4) Except as provided in Subsection E of this Section, if the name signed
23 on a vote, consent, waiver, ballot, or proxy appointment corresponds to the
24 name of a lot owner as indicated in the records of the association, the
25 association, if acting in good faith, is entitled to accept the vote, consent, waiver,
26 ballot, or proxy appointment and give it full effect as the act of the lot owner.

27 E. If only one of several owners of a lot owned in indivision votes, that lot
28 owner has the right to cast the voting interest allocated to that lot. If more than
29 one of the lot owners vote, the voting interest allocated to that lot shall be cast

1 only in accordance with the agreement of a majority in interest of the lot
2 owners. There is agreement of a majority in interest if any one of the lot owners
3 casts the voting interest allocated to the lot without any of the other lot owners
4 promptly protesting to the association. In the event that there is disagreement
5 among the owners of a lot as to their interests, the association, acting in good
6 faith, is entitled to rely upon what is evidenced in its records as to that lot. In the
7 event that the records do not indicate the allocation of interests in a lot, the
8 association is entitled to treat the multiple lot owners as having equal shares. If
9 a lot or an undivided interest in a lot is subject to a usufruct, the usufructuary
10 shall be deemed the owner of that lot or the undivided interest of the lot for
11 purposes of this Section.

12 F. The following requirements apply to proxy voting:

13 (1) A lot owner may appoint a proxy to vote or otherwise act by signing
14 a written appointment or by making an electronic transmission. An electronic
15 transmission shall contain or be accompanied by information from which it can
16 be determined that the lot owner authorized the transmission.

17 (2) The appointment of a proxy is effective when a signed written
18 appointment or an electronic transmission of the appointment is received by the
19 officer or agent of the association authorized to tabulate votes. A proxy is valid
20 only for the meeting for which it is cast and any recessed session of that meeting
21 and is subject to any limitation contained therein.

22 (3) The appointment of a proxy is revocable.

23 (4) The revocation of a proxy appointment, the death of the lot owner,
24 or the appointment of a curator for the lot owner appointing a proxy does not
25 affect the right of the association to accept the proxy's authority unless notice
26 of the revocation, death, or appointment of a curator is received by the officer
27 or agent authorized to tabulate votes before the proxy exercises authority
28 pursuant to the appointment.

29 G. Unless prohibited or limited by the community documents, when an

1 association conducts a vote without a meeting, the following requirements
2 apply:

3 (1) The association shall notify the lot owners that the vote will be taken
4 by ballot.

5 (2) The association shall deliver a paper or electronic ballot in
6 accordance with R.S. 9:1141.38.

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

9 (4) The ballot shall also contain all of the following:

10 (a) The number of responses needed to meet the quorum requirements.

11 (b) The voting interest necessary to approve each matter other than the
12 election of directors.

13 (c) The time and date by which a ballot shall be delivered to the
14 association to be counted, which shall be no fewer than seven days after the date
15 the association delivers the ballot.

16 (5) After delivery to the association, a ballot is not invalidated by death,
17 disability, or attempted revocation by the person who cast the ballot.

18 (6) A vote conducted pursuant to this Subsection is valid only if the
19 number of votes cast on an item equals or exceeds the requirement to authorize
20 each proposed action.

21 H. If the declaration requires that votes on specified matters affecting the
22 planned community be cast by lessees of leased lots rather than by lot owners,
23 this Section applies to lessees as if they were lot owners. Lot owners who lease
24 their lots to other persons may not cast votes on those specified matters.

25 §1141.29. Transfer or encumbrance of common areas or right to income

26 A. All or portions of the common areas may be transferred or subjected
27 to a security right by a two-thirds vote or such greater vote as is required by the
28 declaration. Any limited common area may be transferred or subjected to a
29 security right with the consent of all owners of lots to which any limited

1 common area is allocated. Nevertheless, if all of the lots in a planned community
2 are restricted exclusively to nonresidential uses, the declaration may provide
3 that all or portions of the common areas may be transferred or subjected to a
4 security right by a vote that is less than two-thirds or that limited common areas
5 may be transferred or subjected to a security right upon the consent of fewer
6 than all the owners of lots to which the limited common area is allocated.

7 B. An agreement to transfer common areas or limited common areas or
8 to subject them to a security right shall be prepared and executed by an
9 authorized officer or agent of the association and shall contain a certification
10 that the minimum voting requirements have been met. The agreement, and all
11 ratifications thereof, shall be filed for registry in accordance with R.S.
12 9:1141.4(D) and is effective only upon registry. An agreement subjecting
13 property of the association to a security right shall be created and made
14 effective against third persons as required by law.

15 C. The association, on behalf of the lot owners, may contract to transfer
16 or encumber a right in a planned community, or to grant a security right in the
17 association's right to receive assessments or other income, but the contract is
18 not enforceable against the association until approved pursuant to Subsections
19 A and B of this Section. Thereafter, the association has all powers necessary and
20 appropriate to effect the transfer or encumbrance.

21 D. Unless the security right is effective and filed for registry prior to the
22 filing of the declaration, neither the transfer or encumbrance of any portion of
23 a common area, nor the foreclosure upon such an encumbrance, shall release
24 that common area from the burdens and restrictions imposed by the
25 declaration. Subject to the rights of a holder of a security right in a common
26 area, proceeds from the sale of the common areas are an asset of the association,
27 but the proceeds from the sale of limited common areas shall be distributed
28 equitably among the owners of the lots to which the limited common areas were
29 allocated. If any common areas are transferred to a creditor pursuant to a

1 giving in payment in accordance with Civil Code Article 2655, the transferee
2 acquires the common areas subject to the burdens and restrictions imposed by
3 the declaration.

4 E. Proceeds of loans made to the association shall be used only for the
5 purposes approved by the association.

6 §1141.30. Insurance

7 A. Commencing not later than the time of the first transfer of a lot to an
8 unrelated purchaser, the association shall maintain, to the extent reasonably
9 available and subject to reasonable deductibles, commercial general liability
10 insurance, including medical payments insurance, in an amount determined by
11 the board of directors, but not less than any amount specified in the declaration,
12 covering all occurrences commonly insured against for bodily injury, death, and
13 property damage arising out of or in connection with the use, ownership, or
14 maintenance of the common areas. The declaration may require the association
15 to carry any other insurance, and the association may carry any other insurance
16 it considers appropriate to protect the association or the lot owners.

17 B. If the insurance required in Subsection A of this Section is not
18 reasonably available, the association shall immediately notify all lot owners.

19 C. The issuance of an insurance policy to the association does not prevent
20 a lot owner from obtaining insurance for the lot owner's own benefit.

21 §1141.31. Surplus funds

22 Any surplus funds of the association remaining after payment of or
23 provision for common expenses and any prepayment of reserves shall be paid
24 annually to the lot owners in proportion to their common expense liabilities or
25 credited to the lot owners to reduce their future common expense assessments.

26 §1141.32. Assessments

27 A. Until the association makes a common expense assessment, the
28 declarant shall pay all common expenses. After the initial assessment has been
29 made by the association, assessments shall be made at least annually, based on

1 a budget adopted by the association. The association shall not incur expenses
2 except for the benefit of the planned community.

3 B. Except for assessments made in accordance with Subsections C, D,
4 and E of this Section or as otherwise provided in this Part, all common expenses
5 shall be assessed against all of the lots in accordance with the allocations set
6 forth in the declaration pursuant to R.S. 9:1141.6. The owner of a lot shall be
7 personally liable for the payment of all assessments levied against the lot during
8 the period of his ownership. The association may charge interest on any past
9 due assessment or portion thereof at the rate established by the association,
10 which shall not exceed twelve percent per year.

11 C. To the extent required by the declaration:

12 (1) A common expense associated with the maintenance, repair, or
13 replacement of a limited common area shall be assessed against the lots to which
14 that limited common area is allocated equally or in any other proportion the
15 declaration provides.

16 (2) A common expense benefiting fewer than all of the lots or their
17 owners may be assessed exclusively against the lots or lot owners benefitted.

18 (3) The costs of insurance may be assessed in proportion to risk, and the
19 costs of utilities may be assessed in proportion to usage.

20 D. If damage to a lot or other part of the planned community or any
21 other common expense is caused by the willful misconduct of any lot owner or
22 a guest or invitee of a lot owner, the association may assess that damage or
23 common expense exclusively against that owner's lot, even if the association
24 maintains insurance with respect to that damage or common expense.

25 E. If common expense liabilities are reallocated, common expense
26 assessments and any installment thereof not yet due shall be recalculated in
27 accordance with the reallocated common expense liabilities.

28 §1141.33. Upkeep of the planned community

29 Except as otherwise provided by the community documents, the

1 association is responsible for maintenance, repair, and replacement of the
2 common areas and limited common areas, and each lot owner is responsible for
3 the maintenance of his lot and the maintenance, repair, and replacement of any
4 improvements located thereon. Each lot owner shall afford to the association,
5 and to its agents or employees, access through his lot that is reasonably
6 necessary for those purposes.

7 §1141.34. Adoption of budgets; special assessments

8 A. The board of directors shall submit, at least annually, a proposed
9 budget for the planned community for consideration by the lot owners at a duly
10 called meeting of the association. Not later than thirty days after adoption of a
11 proposed budget, the board of directors shall provide to all lot owners a
12 summary of the budget, including any reserves, and a statement of the basis on
13 which any reserves are calculated and funded. Simultaneously, the board shall
14 set a date, which shall be no fewer than ten days nor more than sixty days after
15 the summary is provided, for a meeting of the association to consider
16 ratification of the budget. A majority vote, or any greater vote specified in the
17 declaration, is required to ratify the budget. If a proposed budget is not ratified,
18 the budget last ratified at a meeting of the association continues until a
19 subsequent budget is ratified.

20 B. The board of directors may propose a special assessment at any time.
21 Except as otherwise provided in Subsection C of this Section, the assessment is
22 effective only if the board of directors follows the procedures for ratification of
23 a budget provided in Subsection A of this Section and the lot owners ratify the
24 proposed assessment at a meeting of the association as provided in Subsection
25 A of this Section.

26 C. If the board of directors, by a vote of two-thirds of directors present
27 and voting, determines that a special assessment is necessary to respond to an
28 emergency:

29 (1) The special assessment becomes effective immediately in accordance

1 with the terms of the vote.

2 (2) Notice of the emergency assessment shall be provided promptly to all
3 lot owners.

4 (3) The board of directors shall spend the emergency special assessment
5 funds only for the purposes described in the vote.

6 §1141.35. Privileges for sums due to the association; enforcement

7 A. A privilege in favor of the association shall arise on a lot for any
8 assessment attributable to that lot or fines imposed against the lot owner.
9 Reasonable attorney fees and costs, other fees, charges, fines, and interest
10 charged pursuant to R.S. 9:1141.20(A)(10), (11), (12), and (13), and any other
11 sums due to the association in accordance with the declaration, this Part, or as
12 a result of an administrative, arbitration, mediation, or judicial decision are
13 enforceable in the same manner as unpaid assessments pursuant to this Section.
14 If an assessment is payable in installments, the privilege is for the full amount
15 of the annual assessment from the time the first installment becomes due.

16 B. To be preserved, the privilege shall be evidenced by a statement of
17 privilege, signed and verified by affidavit of an authorized officer or agent of the
18 association, and filed for registry in the mortgage records of the parish in which
19 the lot is situated. The statement of privilege shall include a complete property
20 description of the lot, the name of its record owner, the amount of delinquent
21 or accelerated assessment, the date on which the assessment became delinquent,
22 and any fines or late fees assessed. At least seven days prior to the filing for
23 registry of the statement of privilege, the association shall deliver to the lot
24 owner, or send to the lot owner by registered or certified mail, a sworn detailed
25 statement of its claim for the delinquent or accelerated assessment that includes
26 the date the assessment became delinquent or accelerated.

27 C. A privilege pursuant to this Section is effective from the time the
28 statement of privilege is filed for registry in the mortgage records and, except
29 as otherwise provided in the Private Works Act, R.S. 9:4801 et seq., is preferred

1 in rank to all mortgages, privileges, and other rights in the lot that become
2 effective against third persons after that time.

3 D. In the absence of a contrary provision in a declaration authorizing
4 two or more associations, privileges in favor of those associations for
5 assessments have equal priority regardless of the date on which they filed
6 statements of privilege unless there is an intervening encumbrance, in which
7 event this Subsection does not apply.

8 E.(1) A privilege for unpaid assessments is extinguished unless a suit to
9 enforce the privilege is instituted within five years after the privilege becomes
10 effective.

11 (2) The effect of recordation of a statement of privilege and the privilege
12 preserved by it shall cease as to third persons unless a notice of pendency of
13 action in accordance with Code of Civil Procedure Article 3752, identifying the
14 suit required to be filed by Paragraph (1) of this Subsection, is filed for registry
15 in the mortgage records within five years after the privilege becomes effective.
16 In addition to the requirements of Code of Civil Procedure Article 3752, the
17 notice of pendency of action shall contain a reference to the recorded statement
18 of privilege. If the effect of recordation of a statement of privilege has ceased for
19 lack of timely filing of a notice of pendency of action, the recorder of mortgages
20 upon receipt of a written signed application shall cancel the recordation of the
21 statement of privilege.

22 F. This Section does not affect the personal liability of a lot owner for the
23 payment of past due sums for which Subsection A of this Section grants a
24 privilege or prevent an association from acquiring a lot through a giving in
25 payment.

26 G. A judgment or decree in any action brought in accordance with this
27 Section shall include costs and reasonable attorney fees for the prevailing party.

28 H. Upon request made in a record, the association shall furnish to a lot
29 owner a statement setting forth the amount of any unpaid assessments against

1 the lot owner's lot. The statement shall be furnished within ten business days
2 after receipt of the request and is binding on the association, the board of
3 directors, and every lot owner.

4 I. An association may commence an action to enforce a privilege on a lot
5 in accordance with this Section only with approval from the board of directors.

6 J. The association shall apply any sums paid by a lot owner who is
7 delinquent in paying assessments in the following order:

8 (1) Unpaid assessments.

9 (2) Late charges.

10 (3) Reasonable attorney fees, costs, and other collection charges.

11 (4) All other unpaid fees, charges, fines, penalties, and interest.

12 §1141.36. Association records

13 A. An association shall retain all of the following:

14 (1) Appropriate accounting records concerning the operation and
15 administration of the association.

16 (2) Minutes of all meetings of the lot owners and board of directors other
17 than executive sessions, a record of all actions taken by the lot owners or board
18 of directors without a meeting, and a record of all actions taken by a committee
19 in place of the board of directors on behalf of the association.

20 (3) The names of lot owners in a form that permits preparation of a list
21 of the names of all lot owners and the addresses at which the association
22 communicates with them, in alphabetical order showing the voting interest each
23 lot owner is entitled to cast.

24 (4) Its original or restated organizational documents and all amendments
25 to them, and all rules currently in effect.

26 (5) All financial statements and tax returns of the association for the past
27 three years.

28 (6) A list of the names and addresses of its current directors and officers.

29 (7) The most recent annual report delivered to the secretary of state.

1 (8) Financial and other records sufficiently detailed to enable the
2 association to comply with R.S. 9:1141.43(B).

3 (9) Copies of current contracts to which the association is a party.

4 (10) Records of board of directors or committee actions to approve or
5 deny any requests for design or architectural changes from lot owners.

6 (11) Ballots, proxies, and other records related to voting by lot owners
7 for one year after the election, action, or vote to which they relate.

8 B. Upon receipt of a request for specific records, the association shall
9 make the records available for examination and copying by a lot owner or the
10 lot owner's agent. An inspection shall occur during reasonable business hours
11 or at a mutually convenient time and location.

12 C. Records retained by an association may be withheld from inspection
13 and copying to the extent that they concern any of the following:

14 (1) Personnel and medical records relating to specific individuals.

15 (2) Contracts and other commercial transactions to purchase or provide
16 goods or services that are currently being negotiated.

17 (3) Existing or potential litigation or mediation, arbitration, or
18 administrative proceedings.

19 (4) Communications with the association's attorney that are protected
20 by the attorney-client privilege or the work-product rule.

21 (5) Information the disclosure of which would violate law.

22 (6) Records of an executive session of the board of directors.

23 (7) Individual lot files other than those of the requesting lot owner.

24 D. An association may charge a reasonable fee for providing copies of
25 any records in accordance with this Section and for supervising the lot owner's
26 inspection.

27 E. A right to copy records in accordance with this Section includes the
28 right to receive copies by photocopying or other means, including receipt of
29 copies through an electronic transmission, if available, upon request by the lot

1 owner.

2 F. An association is not obligated to compile or synthesize information.

3 G. Information provided pursuant to this Section shall not be used for
4 commercial or other improper purposes, and the association may deny access
5 to information if the association has a good faith belief that the information is
6 being requested for such purposes. The court may order the person obtaining
7 information from the association to pay the association's expenses if the court
8 determines that the information was used for an improper purpose.

9 §1141.37. Rules

10 A. Before adopting, amending, or repealing any rule, the board of
11 directors shall give all lot owners notice of the proposed action and provide the
12 text of the rule or the proposed change and the date on which the board of
13 directors will act after considering comments from lot owners.

14 B. Following the adoption, amendment, or repeal of a rule, the board of
15 directors shall notify the lot owners of its action and provide a copy of any new
16 or revised rule.

17 C. The board of directors shall adopt procedures for enforcement of
18 standards adopted in accordance with R.S. 9:1141.14(C) and for approval of
19 construction applications, including a reasonable time within which the board
20 of directors shall act after an application is submitted and the consequences of
21 its failure to act.

22 D. A rule regulating display of the flag of the United States shall be
23 consistent with federal law.

24 E. The board of directors may adopt rules that affect the use of or
25 behavior on lots that may be used for residential purposes only to implement a
26 provision of the declaration or to regulate any behavior in or occupancy of a lot
27 that violates the declaration or adversely affects the use and enjoyment of other
28 lots or the common areas by other lot owners.

29 F. Every rule adopted pursuant to this Section is required to be

1 reasonable.

2 §1141.38. Notice to lot owners

3 A. An association shall deliver any notice required pursuant to this Part
4 by any of the following methods:

5 (1) United States mail postage paid, or commercial courier as defined in
6 Code of Civil Procedure Article 1313(D), to the mailing address designated by
7 the lot owner.

8 (2) Electronic mail to the address designated by the lot owner.

9 (3) Hand delivery to the physical location of each lot, if neither a mailing
10 address nor an electronic mail address has been designated by the lot owner.

11 (4) United States mail postage paid, or commercial courier as defined in
12 Code of Civil Procedure Article 1313(D), to the mailing address of each lot.

13 (5) Any other method reasonably calculated to provide notice to the lot
14 owner.

15 B. The ineffectiveness of a good faith effort to deliver notice by an
16 authorized means does not invalidate action taken at or without a meeting.

17 §1141.39. Removal of officers and directors

18 A. Notwithstanding any provision of the community documents to the
19 contrary, lot owners present in person, by proxy, or by absentee ballot at any
20 meeting of the association at which a quorum is present and for which notice of
21 removal was given may by majority vote remove any director of the board of
22 directors and any officer elected by the lot owners, with or without cause.
23 However, a director appointed by the declarant may not be removed during the
24 period of declarant control.

25 B. At any meeting at which a vote to remove a director or an officer is to
26 be taken, the director or officer being considered for removal shall have a
27 reasonable opportunity to speak before the vote.

28 §1141.40. Incorporation

29 A. When immovable property is acquired by one or more persons acting

1 in any capacity for and in the name of an association that is not duly
2 incorporated, and the association is subsequently duly incorporated, the
3 corporate existence of the association shall be retroactive to the date of
4 acquisition of an interest in the immovable property, but such retroactive
5 existence shall be without prejudice to rights validly acquired by third persons
6 in the interim between the date of acquisition and the date that the association
7 is duly incorporated.

8 B. The effect of the revocation and reinstatement of an association shall
9 be in accordance with law.

10 SUBPART D. CONSUMER PROTECTIONS

11 §1141.41. Applicability; waiver

12 This Subpart applies to all lots except as modified or waived by
13 agreement of purchasers of lots in a planned community in which all lots are
14 restricted to nonresidential use.

15 Revision Comments – 2022

16 Commercial and industrial purchasers are assumed to be more sophisticated
17 and better able to bargain for necessary protections. At the same time, the cost of
18 protection may be substantial. Accordingly, this Section permits waiver or
19 modification of the protections in this Subpart only where all lots are restricted to
20 nonresidential use. The rights provided by this Subpart may not be waived or
21 modified in the case of residential purchasers or in mixed-use planned communities.
22

23 §1141.42. Public offering statement

24 A. A declarant, before offering any interest in a lot to the public, shall
25 prepare a public offering statement in accordance with R.S. 9:1141.43.

26 B. A declarant who offers a lot to a purchaser shall deliver a public
27 offering statement in accordance with this Section and R.S. 9:1141.48. The
28 declarant is liable in accordance with R.S. 9:1141.44 and 1141.48 for any false
29 or misleading statement in the public offering statement and for any omission
30 of a material fact therefrom.

31 C. If a lot in a planned community is also part of any other regime in
32 which the delivery of a public offering statement is required by law, a single
33 public offering statement conforming to the requirements of R.S. 9:1141.43 as

1 related to each regime in which the lot is located may be prepared and delivered
2 in lieu of providing two or more public offering statements.

3 §1141.43. Public offering statement; requirements

4 A. A public offering statement shall contain and fully and accurately
5 disclose all of the following:

6 (1) The name and principal address of the declarant and of the planned
7 community, and a statement that the planned community is a planned
8 community.

9 (2) A general description of the planned community, including, to the
10 extent possible, the declarant's schedule of commencement and completion of
11 construction of common areas and limited common areas disclosed in
12 promotional or marketing materials as "SHALL BE BUILT". Any promotional
13 or marketing materials that show the intended location and dimensions of any
14 contemplated improvement to be constructed anywhere within the planned
15 community or on any immovable property to be added to the planned
16 community shall be labeled either "SHALL BE BUILT" or "NEED NOT BE
17 BUILT".

18 (3) A copy of the declaration meeting the requirements of R.S. 9:1141.5.

19 (4) Copies of any other recorded covenants, conditions, restrictions, and
20 reservations affecting the planned community; the bylaws and any rules of the
21 association; and a brief description of any contracts or occupancy agreements
22 that may be subject to termination pursuant to R.S. 9:1141.24.

23 (5) The financial information required by Subsection B of this Section.

24 (6) Any services not reflected in the budget that the declarant provides
25 or expenses that the declarant pays that may become a common expense of the
26 association, and the projected common expense assessment attributable to each
27 of those services or expenses for the association and for each type of lot.

28 (7) Any initial or special fee due from the purchaser or seller at the time
29 of sale, together with a description of the purpose and method of calculating the

1 fee.

2 (8) A narrative description of any liens, defects, or encumbrances that
3 are revealed in a title policy or title opinion affecting the ownership of the
4 immovable and movable property forming the planned community as of the
5 date of the declaration or that are otherwise known by the declarant.

6 (9) The terms and significant limitations of any warranties provided by
7 the declarant, including statutory warranties and limitations on the
8 enforcement thereof or on damages.

9 (10) A statement that within fifteen days after receipt of a public offering
10 statement, a purchaser, before transfer, may cancel any contract to sell.

11 (11) A statement of any unsatisfied judgment or pending action against
12 the association, and the status of any pending action material to the planned
13 community of which a declarant has actual knowledge.

14 (12) Any restrictions on use, occupancy, and alienation of the lots and
15 any restrictions on the amount for which a lot may be sold.

16 (13) A description of any insurance coverage provided for the benefit of
17 lot owners.

18 (14) Any current or expected fees or charges to be paid by lot owners for
19 the use of the common areas, limited common areas, and other facilities related
20 to the planned community.

21 (15) The extent to which financial arrangements have been provided for
22 completion of all common areas and limited common areas that the declarant
23 is obligated to build pursuant to R.S. 9:1141.46.

24 (16) The zoning classification and any other land use designation
25 affecting the planned community.

26 (17) Any other material circumstances, features, and characteristics of
27 the planned community and the lots.

28 (18) A description of any financial arrangement that is not otherwise
29 disclosed and contained in the budget and that is binding on the association.

1 **(19) A narrative description of all special declarant rights retained by the**
2 **declarant.**

3 **B. The public offering statement shall contain a current balance sheet**
4 **and a projected budget for the association for one year after the date of the first**
5 **transfer of a lot to an unrelated purchaser, and thereafter the current budget**
6 **of the association, a statement of who prepared the budget, and a statement of**
7 **the assumptions concerning occupancy and inflation factors. The budget shall**
8 **include the following:**

9 **(1) A statement of the amount included as a reserve for repairs and**
10 **replacements.**

11 **(2) A statement of any other reserves.**

12 **(3) The projected common expense assessment by category of**
13 **expenditures.**

14 **(4) The projected monthly common expense assessment for each lot.**

15 **C. The declarant shall be required to provide a supplement to the public**
16 **offering statement containing the information required in Subsection B of this**
17 **Section on an annual basis until all of the lots are owned by unrelated**
18 **purchasers.**

19 **D. The declarant shall promptly amend the public offering statement to**
20 **report any material change in the information required by this Section.**

21 **E.(1) A public offering statement is not required in any of the following**
22 **circumstances:**

23 **(a) A gratuitous disposition of a lot.**

24 **(b) A disposition of a lot pursuant to court order.**

25 **(c) A disposition of a lot by a governmental agency.**

26 **(d) A disposition of a lot by foreclosure or giving in payment.**

27 **(e) A disposition of a lot restricted to nonresidential uses in a wholly**
28 **nonresidential community.**

29 **(2) A public offering statement is not required when a planned**

1 community contains fewer than seventy-five lots based on the total number of
2 anticipated lots after all development rights to add additional immovable
3 property have been exercised in accordance with R.S. 9:1141.7.

4 (3) When a lot is subject to a contract to sell and is owned by a person
5 other than the declarant, the association shall be required to provide to the
6 purchaser all information required in this Section within ten days of a request
7 for the information.

8 §1141.44. Purchaser's right to cancel

9 A. The person required to deliver a public offering statement shall
10 provide a purchaser with a copy of the public offering statement and all
11 amendments thereto at least fifteen days before transfer of the lot. A purchaser
12 shall not be required to acquire a lot unless fifteen days have elapsed from the
13 date of the delivery of the public offering statement. A purchaser, before
14 transfer, may cancel the contract within fifteen days after first receiving the
15 public offering statement.

16 B. If a purchaser does not receive a public offering statement as required
17 by this Subpart, the purchaser may cancel any contract to sell any time prior
18 to the transfer, and, upon doing so, shall be entitled to recover actual damages.

19 C. A purchaser may cancel a contract pursuant to Subsection A or B of
20 this Section by hand delivering or mailing notice thereof by prepaid United
21 States mail to the seller or his agent for service of process. Cancellation is
22 without penalty. All payments made by the purchaser to the seller before
23 cancellation shall be promptly refunded.

24 D. If a purchaser does not receive a public offering statement as required
25 by this Subpart prior to or at the time of the execution of the contract to sell, the
26 purchaser may recover all costs and expenses incurred if the purchaser elects
27 to cancel the contract to sell prior to acquisition of the lot.

28 §1141.45. Express warranties of declarant

29 A. Express warranties made by a declarant to an unrelated purchaser,

1 if relied upon by the unrelated purchaser, regardless of the delivery or receipt
2 of a public offering statement, are created as follows:

3 (1) Any affirmation of fact or promise by the declarant that relates to the
4 lot, its use, or rights appurtenant thereto; area improvements to the planned
5 community that would directly benefit the lot; or the right to use or have the
6 benefit of facilities not located in the planned community creates an express
7 warranty that the lot and related rights and uses will conform to the affirmation
8 or promise.

9 (2) A provision that a purchaser may put a lot only to a specified use is
10 an express warranty that the specified use is lawful.

11 B. Neither formal words, such as "warranty" or "guarantee", nor a
12 specific intention to make a warranty are necessary to create an express
13 warranty of quality, but a statement purporting to be merely an opinion or
14 commendation of the immovable property or its value does not create a
15 warranty.

16 §1141.46. Implied warranties

17 Any limitation, modification, or exclusion of implied warranties shall be
18 as provided by law.

19 §1141.47. Warranties

20 A. Except as provided in Subsection B of this Section, the warranty
21 period provided by law shall apply to this Part.

22 B. The association may enforce any warranty claim involving the
23 common areas and limited common areas in any manner provided by law.

24 Revision Comments – 2022

25 Lack of privity does not deprive the association of standing to maintain an
26 action to enforce an obligation owed to the declarant. See R.S. 9:1141.45. For
27 example, in the event that a declarant entered into a contract with another person
28 who agreed to construct improvements on common areas, the association would be
29 subrogated to the rights of the declarant to enforce a claim for defective construction.

30 §1141.48. Effect of violations on rights of action; attorney fees

31 A declarant, association, lot owner, or any other person who has suffered

1 actual damages may bring an action to enforce a right granted or obligation
 2 imposed by this Subpart. The court may award reasonable costs and attorney
 3 fees to the prevailing party.

4 **§1141.49. Declarant's obligation to complete and restore**

5 **A. Except for improvements labeled "NEED NOT BE BUILT" in any**
 6 **promotional materials or on a plat, the declarant shall complete all**
 7 **improvements depicted on any site plan or other graphic representation**
 8 **prepared by or at the direction of the declarant or the party responsible for the**
 9 **preparation of a public offering statement, including any plats or plans**
 10 **prepared pursuant to R.S. 9:1141.9.**

11 **B. The declarant is subject to liability for the prompt repair and**
 12 **restoration, to a condition compatible with the remainder of the planned**
 13 **community, of any portion of the planned community affected by the exercise**
 14 **of rights reserved pursuant to or created by R.S. 9:1141.7 or 1141.12.**

15 **C. Any description of the quantity or extent of the immovable property**
 16 **comprising the planned community, including plats or surveys or improvements**
 17 **indicated as "SHALL BE BUILT", creates an express warranty that the**
 18 **planned community will conform to the description, with the amenities**
 19 **provided by the declarant subject to customary tolerances.**

20 Revision Comments – 2022

21
 22 (a) The duty imposed by Subsection A of this Section is a fundamental
 23 obligation of the declarant and is one that a successor declarant is obligated to
 24 perform under R.S. 9:1141.23.

25
 26 (b) This Section requires the declarant to repair and restore the planned
 27 community following the exercise of any rights reserved or created to exercise a
 28 development right, alter lots, relocate the boundaries between adjoining lots,
 29 subdivide lots, use lots or common areas for sales purposes, or exercise servitude and
 30 use rights. Plainly, this obligation of the declarant exists only if the declarant
 31 exercises these rights. If any right to, for example, alter lots is exercised by another
 32 lot owner, that lot owner, and not the declarant, would be responsible for the
 33 consequences of those acts.

34 **§1141.50. Substantial completion of lots**

35 **A. In the case of a sale of a lot for which delivery of a public offering**
 36 **statement is required, a contract to sell may be executed, but the declarant shall**

1 transfer no interest in the lot until the declaration is filed for registry, the
2 requirements of R.S. 33:114 et seq. have been met, and all other required
3 governmental approvals have been obtained.

4 B. When a declarant has transferred an interest in a lot in a planned
5 community in violation of Subsection A of this Section, the purchaser
6 community shall have the right to rescind the transfer or demand specific
7 performance that the declarant take the actions described in Subsection A of
8 this Section and to pursue any other remedy provided by law for the declarant's
9 failure to comply with the provisions of Subsection A of this Section.

10 Revision Comments – 2022

11 The purpose of this Section is to allow a declarant to "pre-sell" a
12 development. This frequently is required to obtain financing. The declarant is
13 prohibited, however, from the actual sale of lots until all governmental requirements
14 have been satisfied.
15

16 * * *

17 §2792.7. Limitation of liability of director, officer, or trustee of certain homeowners
18 associations

19 * * *

20 B. For purposes of this Section, "homeowners association" means any of the
21 following:

22 * * *

23 (3) A ~~homeowners~~ **lot owners** association as defined in the Louisiana
24 ~~Homeowners Association~~ **Planned Community** Act, R.S. 9:1141.1 et seq.

25 * * *

26 §3132. Definitions

27 As used in this Chapter:

28 (1) "Private transfer fee" means a fee or charge required by a private transfer
29 fee obligation and payable upon the transfer of an interest in an immovable, or
30 payable for the right to make or accept such transfer, regardless of whether the fee
31 or charge is a fixed amount or is determined as a percentage of the value of the
32 immovable, the purchase price, or other consideration given for the transfer. "Private

1 transfer fee" shall not include the following:

2 * * *

3 (g) Any fee, charge, assessment, fine, or other amount authorized under
4 Louisiana Condominium Act, R.S. 9:1121.101 et seq.; the Louisiana Timesharing
5 Act, R.S. 9:1131.1 et seq.; or the Louisiana ~~Homeowners Association~~ **Planned**
6 **Community** Act, R.S. 9:1141.1 et seq.

7 * * *

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

DIGEST

SB 109 Original 2022 Regular Session Ward

Present law (C.C. Art. 783) provides that the Louisiana Homeowners Association Act shall supersede the building restriction articles of the Civil Code in the event of a conflict.

Proposed law retains present law but changes the reference from the Homeowners Association Act to the Planned Community Act.

Present law (R.S. 9:1141.1-1141.9) provides for the Louisiana Homeowners Association Act.

Proposed law (R.S. 9:1141.1-1141.50) creates the Louisiana Planned Community Act modeled after the 2008 Uniform Common Interest Ownership Act.

Present law (R.S. 9:1141.1-1141.3) provides general provisions such as a short title, definitions, and applicability.

Proposed law retains a short title, adds several defined terms, and provides for applicability.

Present law (R.S. 9:1141.4-1141.7) provides for the creation, amendment, and termination of building restrictions and also provides voting procedures.

Proposed law (R.S. 9:1141.4) provides for the creation, amendment, and termination of a planned community.

Proposed law (R.S. 9:1141.5) requires the declaration and any amendments to contain certain information and to be recorded in the conveyance records.

Proposed law (R.S. 9:1141.6) provides for the allocation of common expense liabilities, common surpluses, and voting interests in the association.

Proposed law (R.S. 9:1141.7) provides procedures for a declarant to exercise or transfer any reserved development rights.

Proposed law (R.S. 9:1141.8) requires the declaration to provide for the ownership of limited common areas.

Proposed law (R.S. 9:1141.9) sets forth what information is required to be on the plat including such items as the name of the community, any encroachments, and all servitudes. Proposed law also requires the plat to be made a professional land surveyor.

Proposed law (R.S. 9:1141.10 and 1141.11) authorizes the relocation of lot boundaries and the subdivision of lots upon the request of lot owners and with the proper approval.

Proposed law (R.S. 9:1141.12 and 1141.13) allows the declarant to maintain a sales office and models on lots owned by the declarant and grants the declarant a personal servitude of use on the common areas to discharge obligations or exercise special declarant rights.

Proposed law (R.S. 9:1141.14) requires certain voting procedures to amend the declaration and restricts certain types of actions from being taken by amendment, such as prohibiting an existing use of a lot. Proposed law authorizes the adoption of more burdensome restrictions when special conditions are met.

Proposed law (R.S. 9:1141.16) provides for the rights of secured parties to approve certain actions of the lot owners but does not allow creditors to control the association's general affairs, establish or impose assessments, prevent the settlement of litigation, or prevent the distribution of insurance proceeds.

Proposed law (R.S. 9:1141.17 and 1141.18) provides for master associations and combining planned communities.

Present law (R.S. 9:1141.8-1141.9) provides for the enforcement of the community documents and the establishment of a homeowners association privilege.

Proposed law (R.S. 9:1141.19 and 1141.20) provides for the organization of a lot owners association as a nonprofit corporation and provides for the powers and duties of such an association, such as adopting bylaws, preparing a yearly budget, entering into contracts, receiving assessments, imposing fees and fines, and indemnifying officers and the board of directors.

Proposed law prohibits the association from denying a lot owner access to his property or withholding services necessary for the owner's health, safety, or property.

Proposed law (R.S. 9:1141.21) provides for the powers and duties of the board of directors and the officers of the association. Proposed law prohibits the board from amending the declaration or the bylaws and from terminating the planned community.

Proposed law (R.S. 9:1141.22) provides for the period of declarant control of the association and the termination thereof.

Proposed law (R.S. 9:1141.25) provides for the bylaws of the association to address the number of members on the board, the method of electing officers and the required qualifications, and their powers.

Proposed law (R.S. 9:1141.26-1141.28) provides requirements for association meetings including proper notice, opportunities for comments, location, executive sessions, emergency meetings, availability of materials, quorum requirements, voting procedures, and access to association records.

Proposed law (R.S. 9:1141.29) provides for the transfer or encumbrance of common areas and the right to receive assessments or other income.

Proposed law (R.S. 9:1141.30) provides insurance requirements for the planned community.

Proposed law (R.S. 9:1141.31 and 1141.32) provides for the assessment procedure and the

distribution of any surplus funds.

Proposed law (R.S. 9:1141.34) requires the annual adoption of a budget.

Proposed law (R.S. 9:1141.37) authorizes the adoption, amendment, or repeal of association rules.

Proposed law (R.S. 9:1141.38) provides that notice to lot owners may be achieved by United States mail, electronic mail, hand delivery, or any other method that will provide reasonable notice.

Proposed law (R.S. 9:1141.39) provides for the removal of officers and directors.

Proposed law (R.S. 9:1141.41-1141.50) provides consumer protections through the requirement of a public offering statement, granting the purchaser a right to cancel, express and implied warranties, and authorizing the court to award attorney fees.

Present law (R.S. 9:2792.7(B)(3) and 3132(1)(g)) includes references to the Louisiana Homeowners Association Act and homeowners associations.

Proposed law corrects cross references and terminology for consistency with the Planned Community Act.

(Amends R.S. 9:1141.1-1141.50, 2792.7(B)(3), and 3132(1)(g))